



## OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

February 1, 2011

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Michael Steward**  
Tax Registry No. 914270  
Warrant Section  
Disciplinary Case Nos. 82892/07, 82893/07 & 85140/09

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on July 12, 2010 and was charged with the following:

### **DISCIPLINARY CASE NO. 82892/07**

1. Said Detective Michael Steward while assigned to Juvenile Crime Section, on, about and/or between August 2006 through September 2006, at locations known to this Department, with intent to cause physical injury to another person, did cause such injury to such person.

**P.G. 203-10, Page 1, Paragraph 5**                           **GENERAL REGULATIONS**  
**NYS PENAL LAW SECTION 120.00(1)**                   **ASSAULT IN THE THIRD DEGREE**

2. Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about November 2006, at a location known to this Department, in New York County, with intent to cause physical injury to another person, did cause such injury to such person.

**P.G. 203-10, Page 1, Paragraph 5**                           **GENERAL REGULATIONS**  
**NYS PENAL LAW SECTION 120.00(1)**                   **ASSAULT IN THE THIRD DEGREE**

3. Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about January 20, 2007 through January 29, 2007, at a location known to this Department, in New York County, with intent to cause physical injury to another person, did cause such injury to such person.

**P.G. 203-10, Page 1, Paragraph 5**                           **GENERAL REGULATIONS**  
**NYS PENAL LAW SECTION 120.00(1)**                   **ASSAULT IN THE THIRD DEGREE**

4. Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, engaged in sexual intercourse with another person by forcible compulsion.

**P.G. 203-10, Page 1, Paragraph 5**                           **GENERAL REGULATIONS**  
**NYS PENAL LAW SECTION 130.35(1)**                   **RAPE IN THE FIRST DEGREE**

**DET. MICHAEL STEWARD**  
**DISCIPLINARY CASE NOS. 82892/07; 82893/07; 85140/09**

5 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, did subject another person to sexual contact by forcible compulsion

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

**NYS PENAL LAW SECTION 130.65(1)**

**SEXUAL ABUSE IN THE FIRST DEGREE**

6 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, engaged in sexual intercourse with another person without such person's consent

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

**NYS PENAL LAW SECTION 130.20(1)**

**SEXUAL MISCONDUCT**

7 Said Detective Michael Steward while assigned to Juvenile Crime Section, on, about, and/or between September 2006 and March 26, 2007, with intent to harass, annoy, threaten or alarm another person, did communicate with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**GENERAL REGULATIONS**

**NYS PENAL LAW SECTION 240.30(1)(a) –**

**AGGRAVATED HARASSMENT IN THE SECOND DEGREE**

**DISCIPLINARY CASE NO. 82893/07**

1 Said Detective Michael Steward, while suspended and assigned to the Warrant Section, on or about March 26, 2007, did wrongfully violate a valid New York County Criminal Court Order of Protection, which was issued on March 26, 2007, by Judge Robert M. Mandelbaum, Docket Number 2007NY023944 *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5**

**PUBLIC CONTACT –  
PROHIBITED CONDUCT  
GENERAL REGULATIONS**

**NYS PENAL LAW SECTION 215.50(3)**

**CRIMINAL CONTEMPT IN THE SECOND DEGREE**

2 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on or about April 16, 2008, did give false testimony in the Criminal Court of New York, County of New York, to wit said Detective testified that when he was released from custody he took a train from lower Manhattan to upper Manhattan, when in fact he went to Queens *(As amended)*

**NYS PENAL LAW SECTION 210.05**

**PERJURY**

**DET. MICHAEL STEWARD**  
**DISCIPLINARY CASE NOS. 82892/07; 82893/07; 85140/09**

**DISCIPLINARY CASE NO. 85140/09**

1 Said Detective Michael Steward, assigned to the Warrant Section, on or about and between June 12, 2006 and June 9, 2008, did wrongfully and without just cause utilize one or more Department computers to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information for his personal use

**P.G. 219-14, Page 1, Paragraph 2                    DEPARTMENT COMPUTER SYSTEMS  
DEPARTMENT PROPERTY**

2 Said Detective Michael Steward, assigned to the Warrant Section, on or about and between April 13, 1995 and January 14, 2009, did knowingly associate with individuals reasonably believed to be engaged in, likely to engage in, or have engaged in criminal activities *(As amended)*

**P.G. 203-10, Page 1, Paragraph 2(c)                    PUBLIC CONTACT -  
PROHIBITED CONDUCT- GENERAL REGULATIONS**

3 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on about January 14, 2009, did wrongfully make false statements during his Official Department interview, to wit said Detective did state that he was not aware of the criminal background of [REDACTED], when in fact said Detective had run Ms [REDACTED] name through Department databases *(As amended)*

**P.G. 203-08, Page 1, Paragraph 1                    MAKING FALSE STATEMENT  
GENERAL REGULATIONS**

4 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on or about January 14, 2009, did wrongfully make false statements during his Official Department interview, to wit said Detective did state that he was not aware of the extent of the criminal background of [REDACTED], [REDACTED], until said Detective's criminal trial, when in fact said Detective had run Mr [REDACTED] name through Department databases *(As amended)*

**P.G. 203-08, Page 1, Paragraph 1                    MAKING FALSE STATEMENTS  
GENERAL REGULATIONS**

5 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on or about January 14, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Detective did wrongfully and without just cause prevent or interfere with an official Department investigation in that said Detective did provide misleading and vague responses to questions asked of him during his Official Department interview *(As amended)*

**P.G. 203-10, Page 1, Paragraph 5                    PUBLIC CONTACT -  
PROHIBITED CONDUCT - GENERAL REGULATIONS**

**DET. MICHAEL STEWARD**  
**DISCIPLINARY CASE NOS. 82892/07; 82893/07; 85140/09**

In a Memorandum dated September 2, 2010, Deputy Commissioner Karopkin found the Respondent Not Guilty of Specification Nos 1, 2, 3, 4, and 7, Guilty of Specification No 6, and Dismissed Specification No 5, in Disciplinary Case No 82892/07

Further, the Respondent was found Guilty of Specification No 1 – as modified to reflect the charge of attempted criminal contempt, and Guilty of Specification No 2, in Disciplinary Case No 82893/07

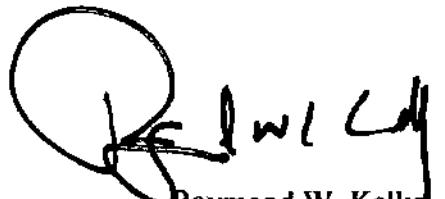
Additionally, the Respondent was found Guilty of Specification Nos 1 and 2, Not Guilty of Specification Nos 3 and 4 and Specification No 5 was Dismissed, in Disciplinary Case No 85140/09

Having read the Memorandum and analyzed the facts of these matters, I approve the findings, but disapprove the recommended penalty of summary dismissal from the Department

The findings of guilt involving Respondent Steward concern very serious issues and are problematic regarding the viability of him remaining a uniformed member of this Department. Thus, I find that his immediate separation from the Department is required

Although Deputy Commissioner Karopkin recommended a summary dismissal of Respondent Steward, I will permit an alternative manner of separation from the Department at this time. Therefore, it is directed that a post-trial vested-interest retirement agreement be implemented with Respondent Steward. In consideration of such, Respondent Steward is to be suspended without pay for 30 days and is to also immediately file for vested-interest retirement. Respondent Steward is to separate from the Department on such suspended duty status and is to forfeit all suspension days (*including without pay, and all time/benefits while on a suspension with-pay status*) since served and to be served, including forfeiting all accrued time/leave balances. A One-Year Dismissal Probation period will also be immediately imposed.

Such vested-interest retirement shall also include Respondent Steward's written agreement to not initiate any administrative applications or judicial proceedings against the New York City Police Department, including seeking reinstatement or return to the Department. If Respondent Steward does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.



Raymond W. Kelly  
Police Commissioner



POLICE DEPARTMENT

The  
City  
of  
New York

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

Detective Michael Steward : ORDER

Tax Registry No. 914270 : OF

Warrant Section : DISMISSAL X

Detective Michael Steward, Tax Registry No. 914270, Shield No. 6082, [REDACTED]

[REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 82892/07, 82893/07, and 85140/09 as set forth on P.D. 468-121, dated March 28, 2007, March 28, 2007 and March 19, 2009, respectively, and after a review of the entire record, has been found, under Disciplinary Case No. 82892/07, Not Guilty of Specification Nos. 1, 2, 3, 4, and 7; Guilty of Specification No. 6; and Specification No. 5 has been dismissed. Under Disciplinary Case No. 82893/07, he has been found Guilty as charged and under Disciplinary Case No. 85140/09, has been found Guilty of Specification Nos. 1 and 2; Not Guilty of Specification Nos. 3 and 4; and Specification No. 5 has been dismissed.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Michael Steward from the Police Service of the City of New York.

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE:



## POLICE DEPARTMENT

September 2, 2010

In the Matter of the Charges and Specifications : Case Nos. 82892/07,  
82893/07 &  
85140/09

- against -

Detective Michael Steward :

Tax Registry No. 914270 :

Warrant Section :

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Martin G. Karopkin  
Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Pamela J. Naples, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: Peter Brill, Esq.  
Karasyk & Moschella, LLP  
225 Broadway – 32nd Floor  
New York, N.Y. 10007

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on July 12, 2010, July 13, 2010 and July 22, 2010, charged with the following

Disciplinary Case No 82892/07

1 Said Detective Michael Steward while assigned to Juvenile Crime Section, on, about and/or between August 2006 through September 2006, at locations known to this Department, with intent to cause physical injury to another person, did cause such injury to such person

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 120 00(1) – ASSAULT IN THE THIRD  
DEGREE

2 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about November 2006, at a location known to this Department, in New York County, with intent to cause physical injury to another person, did cause such injury to such person

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3 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about January 20, 2007 through January 29, 2007, at a location known to this Department, in New York County, with intent to cause physical injury to another person, did cause such injury to such person

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4 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, engaged in sexual intercourse with another person by forcible compulsion

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 130 35(1) – RAPE IN THE FIRST DEGREE

5 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, did subject another person to sexual contact by forcible compulsion

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 130 65(1) – SEXUAL ABUSE IN FIRST  
DEGREE

6 Said Detective Michael Steward while assigned to Juvenile Crime Section, on or about February 26, 2007, at a location known to this Department, in New York County, engaged in sexual intercourse with another person without such person's consent

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 130 20(1) – SEXUAL MISCONDUCT

7 Said Detective Michael Steward while assigned to Juvenile Crime Section, on, about, and/or between September 2006 and March 26, 2007, with intent to harass, annoy, threaten or alarm another person, did communicate with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm *(As amended)*

P G 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 240 30(1)(a) – AGGRAVATED HARASSMENT  
IN THE SECOND DEGREE

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1 Said Detective Michael Steward, while suspended and assigned to the Warrant Section, on or about March 26, 2007, did wrongfully violate a valid New York County Criminal Court Order of Protection, which was issued on March 26, 2007, by Judge Robert M Mandelbaum, Docket Number 2007NY023944 *(As amended)*

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–PROHIBITED CONDUCT  
GENERAL REGULATIONS  
NYS PENAL LAW SECTION 215 50(3) – CRIMINAL CONTEMPT IN THE SECOND DEGREE

2 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on or about April 16, 2008, did give false testimony in the Criminal Court of New York, County of New York, to wit said Detective testified that when he was released from custody he took a train from lower Manhattan to upper Manhattan, when in fact he went to Queens *(As amended)*

NYS PENAL LAW SECTION 210 05 – PERJURY

Disciplinary Case No 85140/09

1 Said Detective Michael Steward, assigned to the Warrant Section, on or about and between June 12, 2006 and June 9, 2008, did wrongfully and without just cause utilize one or more Department computers to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly

utilized a Department computer to ascertain information for his personal use

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GENERAL REGULATIONS

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GENERAL REGULATIONS

5 Said Detective Michael Steward, while on-duty and assigned to the Warrant Section, on or about January 14, 2009, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Detective did wrongfully and without just cause prevent or interfere with an official Department investigation in that said Detective did provide misleading and vague responses to questions asked of him during his Official Department interview *(As amended)*

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

The Department was represented by Pamela J Naples, Esq , Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review

### DECISION

Under Disciplinary Case No 82892/07, the Respondent is found Not Guilty of Specification Nos 1, 2, 3, 4, and 7 The Respondent is found Guilty of Specification No 6 Specification No 5 is Dismissed

Under Disciplinary Case No 82893/07, the Respondent is found Guilty of Specification No 1 – as modified to reflect the charge of attempted criminal contempt, and Guilty of Specification No 2

Under Disciplinary Case No 85140/09, the Respondent is found Guilty of Specification Nos 1 and 2, and Not Guilty of Specification Nos 3 and 4 Specification No 5 is Dismissed

### INTRODUCTION

The Respondent is charged on three separate dockets with a total of fourteen specifications All of these charges stem from a relationship the Respondent had with one ██████████ The first set of charges, under Disciplinary Case No 82892/07, more or less reflects the original criminal charges brought against the Respondent The seven specifications in that case involve three separate assaults on three separate dates,

charges of rape, sexual abuse, and sexual misconduct arising out of a single incident on February 26, 2007, and one charge of aggravated harassment alleged to have occurred over a period of time from September 2006 to March 2007. The victim in all of these alleged crimes was [REDACTED]

Disciplinary Case No. 82893/07 follows on the heels of the first above-mentioned case. When the Respondent was arraigned on those criminal charges the judge issued an order of protection. The first specification alleges that the Respondent violated that order of protection by calling [REDACTED] after he was released from arraignment. The Respondent was also charged with this conduct criminally. The second specification alleges that during the trial of the contempt charge, in Criminal Court, the Respondent committed perjury.

The five specifications in Disciplinary Case No. 85140/09 involve non-criminal charges. The first specification alleges computer misuse, the next two specifications relate to criminal association with two individuals who testified at his criminal trial, and the last two specifications allege misconduct at his official Department interview.

The criminal charges contained in the first above-mentioned disciplinary case were dismissed by the district attorney (DA) and not prosecuted criminally. The Respondent went to trial on the criminal contempt charge and was found not guilty. Then testified at the criminal trial but did not testify at this Departmental proceeding. Portions of testimony from the criminal trial, including [REDACTED] testimony, were entered into evidence.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Hsiao Loo, Sergeant Peter Libranti, and Lieutenant Paul Murphy as witnesses

Sergeant Hsiao Loo

Loo has been a member of the Department for ten and a half years and is currently assigned to the Midtown South Detective Squad, where he supervises and manages the case load. He has been assigned there for approximately one year. In March of 2007, he was assigned to Internal Affairs Bureau (IAB) Group 27, and as a sergeant there he was a case investigator investigating criminal allegations of officers assigned in Queens.

Loo said that in March of 2007 he was assigned to investigate a matter involving the Respondent. The original allegation that came in was an allegation of rape and assault. Loo told the Court that he first reviewed the call out folder which included reviewing all the investigative steps that had been taken prior to his getting the case. A call out is basically the initial investigation, the preliminary steps that were taken before it gets assessed to be a case.

Loo explained that in this instance, the initial allegation came through the IAB Command Center. An individual named [REDACTED] called the command center alleging that the Respondent was making harassing phone calls to her. During this complaint she mentioned that she had spoken to another individual named [REDACTED] [REDACTED], an ex-girlfriend of the Respondent, who had been allegedly raped by him. As soon as these allegations came in, Loo said, teams of investigators were sent to interview

[REDACTED] and [REDACTED]

Loo told the Court that he learned from the call out folder that [REDACTED] told the investigators that she was assaulted on several occasions, and on one occasion was assaulted sexually. She said that in regard to the occasion on which she was assaulted, "she had swelling, bruising on her arms where she was grabbed and she was punched in the face and she had bumps on her head." According to the interview, this occurred three or four times. Loo testified that with respect to the alleged sexual assault, he learned that it happened once and that it occurred in February 2007.

Loo stated that [REDACTED] was brought in for another interview the day after and a controlled phone call was set up. Then called the Respondent and discussed the alleged sexual assault. Loo testified that he was not present during this controlled phone call, but that he had the opportunity to review it about a week and a half later in the Manhattan DA's office. Loo said that they reviewed it there because there was a lot of static on the tape and so they brought it to that office to get it enhanced and make it more audible. Loo said that they were successful in that they were able to distinguish the statement made by the Respondent, a specific statement which was the Respondent saying, "I am sorry for forcing you to have sex with me." Loo said that he reviewed the tape approximately 30 times, and that he is sure that this is what he heard.

Loo affirmed that on March 26, 2007, the Respondent was arrested for rape and assault, and said that he was not involved in the arrest at that time as he was assigned to the case on the 27<sup>th</sup>. After his review of the call out folder on the 27<sup>th</sup>, he conducted computer background checks on the Respondent, as is done in every case. Loo said that he learned that the Respondent had an alias (Alex) that people referred to him by, as did

the complainants Loo said that he learned this from the Respondent's employment application, or PA15

Loo testified that the Respondent was rearrested on March 27, 2007, the day after his arraignment. The Respondent had been issued an order of protection stating that he was not to contact the complainant in any way, but the next day during the follow-up interview the complainant [REDACTED] informed one of the investigators in the office that he attempted to contact her via telephone. Having refreshed his memory with a document, Loo told the Court that the order of protection had been issued on March 26, 2007, at 1554 hours. Loo said that he was involved in the Respondent's re-arrest, in that he met him at an agreed upon location and transported him to the 5<sup>th</sup> Precinct for processing, then transported him to Manhattan Criminal Court.

Loo stated that after the re-arrest he continued to be involved in the Respondent's case in that he was to monitor the criminal prosecution and update the Department as to how it was going. Loo sat in on the interviews that the DA's office conducted, and had the DA apprise him on the kind of charges that they were going to keep and what they were going to do. He also went to court to see what was going on in the trial.

Loo said that there came a time when the DA's office conducted a subsequent interview with [REDACTED], which he sat in on. During the course of that interview he learned that [REDACTED] had had several physical confrontations with the Respondent which resulted in injuries. She also stated in that interview that during one of the confrontations she was forcibly raped. Loo said that her statements were consistent with what he had already learned.

*In addition to participating in these interviews, Loo's investigative steps included*

doing additional computer checks and going to sit in on one day of the Respondent's criminal trial. During the course of the day the Respondent brought two witnesses to testify on his behalf, [REDACTED] and [REDACTED]. Loo said that during the trial the DA brought up the fact that both of those individuals have criminal records and that when he got back to his office he did his own computer checks on them to confirm this. He explained that he did E-justice checks, which are basically a criminal background history of the person. Loo stated that both [REDACTED] and [REDACTED] had criminal backgrounds. He was shown a worksheet that he had prepared in regards to the computer checks that he had conducted (the witness stated that he prepared this document in the regular course of business as an investigator).

Having refreshed his memory, Loo stated that he learned that [REDACTED] had been arrested on seven occasions. He had pled guilty in five of these cases. He noted the last two had no disposition at the time of the E-justice search, consequently he did not know what happened with them and assumed that they were still pending. When asked by the Court, Loo explained that in 1994 [REDACTED] pled guilty to forgery and grand larceny, in 1995 to grand larceny and criminal possession of stolen property, in April of 1995 to possession of burglary tool, in May of 1995 to grand larceny, and in September of 1996 to grand larceny and unauthorized use of vehicle. Loo stated that he did not think that he did enforcer checks with respect to these two individuals, since he did not have that in his notes, but said that the investigator that took the case after him might have done that.

Loo acknowledged that during the course of his investigation into the criminal association allegation he had cause to review [REDACTED] criminal rap sheet, which is where he gathered information about [REDACTED] criminal background. Yates' rap sheet, which

shows arrest and convictions and is entitled Depository Inquiry, was received in evidence as Department's Exhibit (DX) 1 Loo said that he also had cause to look at [REDACTED]

[REDACTED]' rap sheet, and [REDACTED] ( [REDACTED] ) [REDACTED]' rap sheet, also called Depository Inquiry, was received in evidence as DX 2

Loo told the Court that on the day he sat in on the Respondent's criminal trial he heard both [REDACTED] and [REDACTED] testify According to Loo, [REDACTED] testified that he had made a phone call to the complainant [REDACTED] stated that the Respondent had been with her that day and could not have made a phone call Loo told the Court that during [REDACTED] testimony he could hear his voice and that when he met with the Respondent he could hear the Respondent's voice He said that he remembered thinking that they had two very distinctive voices, which in his mind would be hard to confuse He testified that this stood out in his mind because the whole testimony was based on the fact that [REDACTED] stated that he called and the complainant stated that the caller was the Respondent

When asked by the Court, Loo confirmed that the Respondent's criminal trial was a jury trial Loo told the Court that the result of the trial was not guilty

Loo testified that he continued to investigate the Respondent's case for a couple of weeks after the conclusion of the trial, until he was transferred to a different unit and the case was transferred to another investigator

On cross-examination, Loo was shown his worksheet number 62, which he completed In it he indicated that he had observed the testimony of [REDACTED] and [REDACTED] and that the criminal contempt of the Respondent ended in acquittal Loo testified that the standard Internal Affairs practice is for the member of IAB to observe the trial as it continues He acknowledged that on the worksheet the statements about [REDACTED] and

[REDACTED] were immediately followed by the statement that the case ended in acquittal, and that there is no indication on that worksheet of the Respondent testifying Loo could not recall if anybody from IAB was there for the day of the trial between the day when [REDACTED] and [REDACTED] testified and the day of the acquittal He acknowledged that somewhere in the worksheet there would have been an indication that the Respondent testified

Loo said that "he guesses" it is fair to say that the Respondent was not calm at the time that he spoke to him in the 5<sup>th</sup> Precinct, and that the Respondent was nervous or upset that he was being arrested He said that he has not had any occasion to speak to the Respondent in situations where he was not nervous or upset Loo also acknowledged that he has never spoken to [REDACTED] on the telephone

Loo said that in terms of having prior experience investigating sex crimes before he joined IAB, he had participated in a couple of interviews for sex crimes where he acted as a translator because he speaks Mandarin During those interviews he was translating for one of the investigators and was not the one who originated the questions Loo said that he has not personally conducted any sex crime interviews on his own He agreed that it would be fair to say that sex crimes detectives for Special Victims in the Police Department undergo specific and special training, and that he had not had that training Loo acknowledged that when the DA's office interviewed [REDACTED], they used Edward Tacchi to interview her Loo agreed that they had used Tacchi because he was an experienced sex crimes investigator

Loo was present for the interview between [REDACTED] and Tacchi He said that the DA's office did not come to any conclusions about [REDACTED] account of her assault,

aggravated harassment and sexual allegations against the Respondent based on that interview. Loo was then asked to refresh his memory with a document which was received in evidence as Respondent's Exhibit (RX) A. The document is worksheet 46 dated 12/8/07, the subject of which was a conferral with Assistant District Attorney (ADA) Jessica Lynn. After reviewing the worksheet, Loo testified that ADA Lynn had informed the investigating officer that they decided to drop all criminal charges against the Respondent, except for the criminal contempt. The Respondent had been arrested and charged with one count of rape 1, three counts of assault, and one count of aggravated harassment. According to the worksheet Lynn stated that based on the interview with Tacchi, the DA's office had determined that the events described by [REDACTED] did not constitute rape, and therefore the sex offense charges would be dropped. The allegation of assault was dropped because it was discovered that [REDACTED] had initiated the physical altercations and that the Respondent had fought back in self-defense, and the phone harassment charges were dropped because phone records showed that too many phone calls were made back and forth between the victim and the Respondent to establish that one was harassing the other.

Loo could not recall having any contact with [REDACTED] after December 8<sup>th</sup>. He also did not recall receiving any pictures of [REDACTED]'s alleged injuries, nor did he receive or discover any police reports, doctor reports, ambulance reports, or hospital reports about her injuries. Loo did not recall receiving any documentation that had not been mentioned, other than [REDACTED]'s conversations with the DA's office or the police department, about any of her prior allegations of assault or aggravated harassment.

Loo reiterated that during his testimony [REDACTED] had stated that he was the one who

had made the phone call to [REDACTED], and having refreshed his memory with a transcript of [REDACTED]' testimony, said that [REDACTED] had said he made the calls at approximately ten o'clock on the date of the alleged criminal contempt, March 26, 2007

Sergeant Peter Libranti

Libranti, an 11-year veteran of the Department, had been assigned to IAB Group 27 for two years and almost three months as of the time of this testimony. His duties and responsibilities there include investigating cases of corruption and misconduct. In March of 2007 he was assigned to Transit Bureau District 23, and was transferred to IAB Group 27 on April 17, 2008. On approximately May 19, 2008, after a two week internal investigations training course, which dealt with such issues as reviewing case folders to get an idea of what was involved in case work, Libranti was assigned to investigate a matter regarding the Respondent.

Libranti said that when the Respondent's case was first assigned to him he reviewed the contents of the case and conferred with the previous investigator, Loo. He stated that he learned that there were two females in the case, one who had alleged that the Respondent had raped her on several occasions and another female who made the same allegations that during their relationship he had raped her on several occasions. He noted that the Respondent had been arrested for the rape charge. He said he also learned that the Respondent was on trial for violating an order of protection that was served upon him upon his release of the first arrest for the rape charge, and that the trial ended in an acquittal. Libranti said that he learned that there were two defendants who testified on behalf of the Respondent, [REDACTED] and [REDACTED], and that both of them had

criminal histories

Libranti said that once he was made aware that [REDACTED] and [REDACTED] had criminal histories, he began doing administrative steps such as requesting a focus audit, a computer history of a specific officer to find out what names have been accessed in the Department's computer systems. The purpose of doing so is to build a stronger case of criminal association, whereas the police officer has to know that this person has a criminal history, and if you access their names in certain Department systems it will give you that information to know if they have ever been arrested before. Libranti explained that he was talking about the Booking Arraignment Disposition System (the BADS system), the Finest system (which gives access to the DMV and a person's drivers license information as well as information on whether or not they have any warrants)

Libranti said that after a review of the records it was determined that the Respondent had accessed several people involved in this case, including [REDACTED] and [REDACTED] on the BADS system on several occasions. He had also accessed [REDACTED] [REDACTED] himself, [REDACTED] ([REDACTED]), and the Respondent's [REDACTED], [REDACTED]

Libranti explained that when you run a person's name through the BADS system you learn what they have been arrested for, what the charges are and what the disposition of the arrest was. Libranti said that the results of his search showed that the Respondent had accessed the names and was made aware of their criminal history. Libranti said that the searches had been conducted through a Department computer system terminal, which asks for the Department member's tax ID number and a confidential password that is assigned to the Department member. The names that the Respondent accessed were thus filed under his tax number. Libranti did not recall the

exact dates on which the computer checks were run, but did know that the check on [REDACTED] was run approximately one month before the trial and that the one on [REDACTED] was run approximately a year before the trial. The BADS audit reports of the Respondent's history, which show the user ID, the date and time that it was accessed, the program it was accessed in and what and how something was actually searched, was received in evidence as DX 3.

Libranti said that after he had reviewed the audit reports and consulted with his commanding officer, he added the charges of computer misuse and began reviewing phone records. He added the allegation of computer misuse because a member of the service is only supposed to access Department computer systems for official Department business, and the result of his investigation showed that that did not occur.

Libranti said that he reviewed the phone records from the Respondent's cell phone numbers. There were two sets of records, a cell phone record and one telephone number for an OnStar vehicle. The purpose of reviewing those telephone records was to ascertain if the Respondent had had any further contact with [REDACTED], [REDACTED], or [REDACTED]. A review of the personal cell records indicated that there was no contact with [REDACTED] or [REDACTED].

Libranti said that during the course of the investigation, prior to his being assigned to the case, a subpoena was requested for the Respondent's OnStar records. These records were already in the case file when he received the case. Having refreshed his memory with the case folder, he saw that the subpoena had been granted by the Deputy Commissioner of Legal Matters on June 15, 2007. The subpoena was for Cellco Partnership, which does business as Verizon Wireless. A copy of the records was offered

into evidence

On voir dire examination, Libranti acknowledged that the records being offered were different than the ones in the case file in that there was some writing on the right-hand side that was whited-out, a notation that Libranti believed he wrote, which said

[REDACTED] work number' in parentheses There was also a fax notation on the left-hand side of the page Libranti said that it was faxed from his group, Group 27 He said that he guesses that since he did not actually receive the fax he does not know where it came from, and that he did not fill out the worksheet saying that it was received Libranti said that he believed that there was a letter that comes with it certifying the accuracy of the records, based on his past experience with phone records, but that he did not recall if there was one for this specific case

On continued direct examination, Libranti stated that during the break for lunch on the day of his testimony, he called Group 27 and had all 20 pages of the records, which were in a folder, faxed to the Department Advocate's office He also called Verizon and spoke to their subpoena compliance team or law department and gave them the target number that he was looking for and asked if they had a certification letter as to the documents they had sent him They did and they faxed it, a copy of the subpoena and a cover sheet over

Upon further voir dire examination, Libranti was asked to look at a fax cover sheet from Verizon addressed to Loo dated July 18, 2007 The witness read the following from the comments section "Enclosed please find the records that have been requested Please note that the number belongs to OnStar The reseller for such a number only call details for one calendar year that could be provided If you have any

[questions] please do not hesitate to contact us Thank you "

Libranti said that he was not positive that this certification was attached as it was in April of 2008 He acknowledged that IAB was working closely with the Manhattan DA's office in the prosecution of the Respondent He did not know what phone records were used in the prosecution of the Respondent relating to his OnStar telephone The records were accepted into evidence as DX 4 with the caveat from the Court that the certification which was obtained on the day of the testimony was not absolutely certain to be connected to the records, although it does seem to have some relation to it

On continued direct examination, Libranti told the Court that having reviewed several sets of phone records, including the OnStar records in evidence, he learned that there were two telephone calls placed to the home of [REDACTED], at approximately 20 21, 20 25 hours, on the day of the Respondent's arrest (March 26, 2007) Libranti stated that based on the phone numbers, he drew the conclusion that two phone calls were placed to [REDACTED] from the Respondent's personal vehicle, which would have violated the order of protection that was served on him on that day

Libranti testified that his next step was to conduct a Patrol Guide hearing of the Respondent, which he did in January of 2009 During that hearing he questioned the Respondent about the allegations made by the females in this case The transcript and tape of the interview were received in evidence as DX 5 Libranti said that based on the information that he gathered from the Respondent's Patrol Guide hearing he put the case in for closing, which is generally what happens after a Patrol Guide hearing He was not, however, able to close the case until he received the copy of the minutes of the trial that he requested When he received the Criminal Court minutes he reviewed them, and then

conducted several additional interviews

Pursuant to the information that he learned from the Respondent's Patrol Guide hearing and the Criminal Court minutes, he had cause to request the Respondent's Metrocard records. The basis of the request was that after reading the respective testimonies of the Respondent and [REDACTED], there seemed to be a discrepancy in the Respondent's whereabouts on that day. [REDACTED] had testified that he had picked up the Respondent upon his being released from Manhattan Central Booking on March 26, 2007, in the Respondent's [REDACTED], and that together they had driven in that car to a location in [REDACTED]. Libranti said he believed that it was the Respondent's [REDACTED] house that they went to. At the criminal trial, the Respondent had testified that upon being released he took the train to [REDACTED] house, and when he was asked about or advised as to the fact that [REDACTED] had just testified to a different story, the Respondent testified that [REDACTED] had made a mistake in his recollection of how they got to Manhattan. Libranti felt that in this case his request of the Respondent's NYPD Metrocard records was warranted.

Upon receipt and review of the records, Libranti learned that at approximately 1810 hours, 1812 hours, there was a swipe from the Respondent's Metrocard at Chambers Street, approximately one hour later there was another swipe on his card at Sutphin Boulevard, and approximately 10 or 15 minutes later there was a swipe on a New York City bus. Sutphin Boulevard, he said, is in Queens and the bus line in question was the Q1, which also runs in Queens.

Libranti acknowledged that having reviewed the Respondent's testimony he had also learned that the vehicle that this phone call was placed from on the day of his arrest

was kept at his command, which was at Creedmoor Hospital where he worked Libranti was not sure exactly where the hospital is located, but said that he believed it was in the confines of the 105 Precinct in Queens Libranti said that he had learned that on the day the Respondent was arrested he had been guarding a prisoner and that upon his arrest his vehicle was brought back to his command Libranti explained that he had thus learned that the vehicle that this phone call came from was at Creedmoor Hospital, which, based upon his conversation with a lieutenant at "Transit Bureau Investigation Special Investigations," he learned is in walking distance of the Q1 bus line The Respondent's Metrocard records were received into evidence as DX 6

Libranti reiterated that these records were received subsequent to the Respondent's Patrol Guide hearing He did not recall if during the hearing the Respondent was asked about his car and its whereabouts at the time of his arrest, nor did he recall when exactly he learned where the car was located Libranti said that he learned that the Respondent stated that he did not retrieve his vehicle until the following day, on March 27, 2007 Having reviewed the Respondent's Metrocard swipes, they did not show that the card was used on March 27, 2007

On cross-examination, Libranti was handed DX 3, the BADS inquiry printout He acknowledged that he did not know what the program BADS DFNB (the printout indicated that for the most part the Respondent used this program to conduct his searches) was, nor did he know the difference between that and other BADS programs Libranti said that based upon the printout he did not know what type of information the Respondent would have had access to when he did those searches He stated that he is personally familiar with the use of the BADS system, and told the court that when a

person gets on the BADS screen and puts in their tax number there is a list of items that comes up of how you want to search, either by arrest ID, or social security number, or name, or NYSID number Libranti acknowledged that if there were multiple people with the same name, a search might have to again be further narrowed, and that if a person had multiple arrests in order to get more information about any particular arrest there would have to be an additional step taken Libranti said that to his knowledge there was no indication on the report in question as to how far the Respondent got into his inquiry

Libranti was handed a set of OnStar records which he did not recall seeing He was not certain if they were part of his investigative file but stated that he had never requested them Libranti did not know who the primary IAB liaison with the DA's office was during the Respondent's trial The records were received in evidence as RX C

Libranti acknowledged that the OnStar records in DX 4 indicate that there were 11 calls originating on March 26, 2007, and that according to the OnStar records in RX C, there were only eight Libranti noted that of those eight phone calls there was one phone call, the first phone call on RX C, made to the number (212) 426-0162 (Then's phone number), while on DX 4 both the fifth and sixth phone calls were made to that number Libranti agreed that the second phone number on RX C is (646) 373-7508, which the Department stipulated was [REDACTED] cell phone number

Libranti agreed that both the records in DX 4 and the ones in RX C appear to be in chronological order He agreed that the first call in RX C appears to be made to [REDACTED] number and the second one to her [REDACTED] number, and that those numbers do not repeat on RX C for that day He agreed that on DX 4, the second call of the day appears to be at 7 54 in the morning to [REDACTED] cell phone, but that there is no call on the morning

of March 26 to [REDACTED] number Again on DX 4, there appear to be two more calls to [REDACTED] number, one at approximately 8 21 p m and one at approximately 8 22 p m The second of those calls goes from 8 22 and 24 seconds to 8 24 and 31 seconds

Libranti stated that it would be fair to say that the Respondent received the order of protection telling him to stay away from [REDACTED] some time in the afternoon or early evening of March 26, 2007, and so during his investigation his contention would have been that the calls made at 8 o'clock (if the Respondent made them) would be in violation of the order of protection, but that any calls made prior to that time would not be in violation of the order of protection Libranti acknowledged that he had reviewed the Respondent's Criminal Court testimony and that the Respondent testified that he did make calls to [REDACTED] on March 26, 2007 in the morning—one to her home phone, and one to her cell phone

When asked by the Court, Libranti testified that the Respondent was arrested on March 26, 2007 in the early morning, at approximately 9 a m , and was released at 1800 hours At the time of the arraignment the judge issued the order of protection

When asked by the Court, Libranti reiterated that he did not know how the Respondent had made those phone calls, but that he made them before he was arrested The phone call was placed at 7 46 a.m on March 26, and the Respondent was not arrested until approximately 9 a m He told the court that the Respondent was issued the Metrocard in DX 6, and told the court that unlike a regular Metrocard, a Police Department card can be swiped twice as there is no time restriction on it As per the records, he agreed that it was fair to say that there were two swipes at Chambers Street, approximately five or six seconds apart, and that it is possible that the Respondent swiped

another person through

The witness was unaware that there are three stations in lower Manhattan that are called 'Chambers Street,' and the Court took judicial notice of that fact Libranti acknowledged that the records indicated that someone had swiped in at Sutphin Boulevard He also said that he had done the investigation on the Q1 swipe himself, and that he believes that there is more than one Q1 bus line Libranti confirmed that it is his contention, based on investigation, that on the night of March 26, the Respondent got into a Chambers Street train then traveled out to Queens, got on a Q1 bus, picked up his car, and thereby made the calls from the car that violated the order of protection

Libranti said that he did not try to recreate that route under the same condition to see how long it would take to get out there, nor did he check to see if the Q1 bus was running on the route past Creedmoor on the evening of March 26, 2007 He told the Court that he was not able to tell where the Respondent got on the bus, just that he was on that specific bus When asked if it was possible that the Q1 bus was not running past Creedmoor that night, Libranti said that he believes, but is not a hundred percent certain, that both routes run within walking distance of Creedmoor Hospital

Libranti told the Court that the Respondent was arrested somewhere other than Creedmoor (he believes that it was at Northshore Hospital), and said that he testified that someone from the Respondent's command took his car back to Creedmoor because that is what he read in the minutes He said that there were no records at that command about the car being dropped off, by whom, when, or who had the keys The testimony just indicated that the keys were left with someone at the command As far as records of the car being there, there were none Libranti said that he could not track down the person

who had the keys, and that there were no records about who picked up the car. He told the Court that there were no surveillance videos of the parking lot that would show who picked it up, and that having requested the EZ-pass records, there was no activity for those specific dates, March 26 and March 27.

Lieutenant Paul Murphy

Murphy, a 36-year veteran of the NYPD, has been assigned to the Transit Bureau Special Investigations Unit for the past eight years. As a unit supervisor, his duties and responsibilities include overseeing investigations, running Metrocards with the liaison for the Department with the New York City Transit Authority and any law enforcement agency they need.

Murphy told the Court that he is familiar with how to read Metrocard printouts, and having been shown DX 6, he explained that the first column indicates the Metrocard serial number, which is unique for every Metrocard. He said that the second column indicated the date of use, the third column indicates the time of use in military time, and the fourth column indicates the ride count, the number of times the Metrocard was used. The next column indicates unlimited pass use, i.e. where the card was used, and whether it was used at a turnstile (marked as TS) or a bus (AN). The column after transaction type indicates the location, i.e. the name of the subway station or the name of the bus, and the next column, the booth column, indicates, "what used to be referred to as the booth area Metrocard used now it's fare control area or the bus route." It indicates what area the Metrocard was used in. The employee unrestricted column indicates that it is an employee's card.

Having turned his attention to March 26 2007, Murphy testified that the record indicates that the card was swiped twice at the Chambers Street station, fare control area apple 71 Murphy explained that this indicates that it was the booth located at Chambers and Reade Street, from which location one can access the BMT J or M lines, or the Lexington Avenue 4, 5, or 6 lines To get to the Lexington location, a person would swipe the card and walk through an underground passage to the platform Murphy said that someone could swipe in at Chambers Street and walk underground to the 6 The entrance location for the 6 is referred to as the Brooklyn Bridge

Murphy told the Court that just by looking at the record he cannot tell where the two swipes were made at 1812, just that the card registered twice at that location, which could indicate that two people swiped It could also mean that the card was swiped and the individual did not realize that the ride had taken and swiped again Murphy reiterated that it was possible that the two swipes could have been by the same person In regard to the 1912 hours swipe, Murphy explained that it was done at Sutphin Boulevard on the N line Murphy said that according to the record, the Metrocard was next used on a bus, indicated at 1924 hours The bus was the Q1 route, which Murphy said he was vaguely familiar with and which runs along Hillside Avenue out through Queens Village Murphy said that he believes it is in the vicinity of Creedmoor Hospital

Murphy said that if someone was to travel from Chambers Street in lower Manhattan to Creedmoor using public transportation, starting with the first subway point that is on the records, there could be two different ways to go If they took the BMT J train they would go to Sutphin Boulevard or Jamaica, walk up to Hillside Avenue and pick up the Q1 bus If they entered into the Chambers Street station they would take the

number 6 train up to 59<sup>th</sup> Street Lexington Avenue where there is a connecting passageway to Lexington Avenue on 63<sup>rd</sup> on the F line That route, however, does require one to swipe their Metrocard even though it is a free transfer, then take the F line up to Hillside Avenue and change for the Q1 bus along the way Murphy said that based on the available records there was no swipe indicating the change at 63<sup>rd</sup> Street

Murphy said that he is familiar with the 59<sup>th</sup> Street Bridge, which connects Manhattan and Queens, and that there is no required toll on that bridge

On cross examination, Murphy said that he does not know how many different East River crossings are toll free and how many have tolls on them Murphy also acknowledged that someone could drive anywhere from Creedmoor Hospital

Murphy told the Court that DX 6, the Metrocard records, do not indicate missed or invalid swipes, and that he is not aware of a report that does and has never had a need for it He said that the Poe code, the POELLC column, is what allowed him to figure out that the record was referring to the Chambers Street J, M, Z, 4, 5, 6 station, and that this was 2106 He also affirmed that 6438 was the bus number, and that 0302 from the Poe code indicates that it was the Q1 line Murphy said that in March of 2007 there were two routes that the Q1 took, one longer than the other He was not sure without looking at a map whether or not both of those routes pass by Creedmoor Hospital, and said that based upon this record there is no way to know what route the bus indicated on it took

Murphy testified that there is a free transfer from the 6 line to the F line at 51<sup>st</sup> Street, and that someone could therefore get out to Sutphin Boulevard on the F line without having to re-swipe Murphy acknowledged that according to the records someone swiped into the Sutphin Boulevard station at 1912 hours He noted that you do

not have to swipe out of the station. In the course of his investigation he was asked to look at surveillance cameras that would determine who was entering the stations or buses in question, but said that the videos of New York City Transit are only kept for forty five days, while he was contacted after almost two years.

On re-direct examination, Murphy said that he was not sure if someone would need to swipe their Metrocard to transfer from the 6 to the F line at 51<sup>st</sup> Street. He also said that based on the records that were in front of him there was a swipe at Sutphin Boulevard on March 26, 2007 at 1912 hours, and that the only train that stops there is the F line.

When asked by the Court, Murphy clarified that Sutphin Boulevard is not close to the Q1 bus, but rather about 20 blocks away. He said that it would be possible to walk there or to swipe in at Sutphin and take the F train a couple of stops to get to the Q-1 bus by going east to the 165<sup>th</sup> stop.

#### The Respondent's Case

The Respondent testified on his own behalf.

#### The Respondent

The Respondent is a 17-and-a-half-year veteran of the NYPD, currently assigned to the Manhattan Warrant Squad. At the time of this testimony he was on modified duty status, based upon the charges pending at this hearing. The Respondent is married to but separated from [REDACTED]  
[REDACTED]

[REDACTED] The Respondent said that he continues to have a friendly relationship with his wife's family members, including her mother, who lives at [REDACTED]

The Respondent testified that in 2007 he was separated from his wife and was dating both [REDACTED] and [REDACTED], on and off at the same time. He said that at first they did not each know about the other one's existence, but there came a time when they found out. The Respondent said that when [REDACTED] found out in February, she got upset and started threatening to get him into trouble. He said that [REDACTED] actually found out first, he believed. Then had gone through his cell phone and called [REDACTED]' number. She became enraged and had a long conversation with [REDACTED] which the Respondent did not get to hear.

The Respondent said that after these incidents he continued to have a relationship with [REDACTED] and that [REDACTED] broke off with him. He said that prior to that he had never physically or sexually assaulted her. He was not sure if she had made a police report against him, but said that she had threatened to. Prior to March 26, 2007, the Respondent did not have any contact with the police based upon allegations made by [REDACTED], or any complaints made by [REDACTED]. The Respondent said that he has never physically or sexually assaulted [REDACTED].

The Respondent testified that on March 26, 2007 he was working in the Queens Warrant Squad, where he had been reassigned to watch a colleague who was in a coma. He said that his lieutenant, Weeks, called to ask where he was. When he said he was in the waiting room he was told to just stand by. Weeks arrived with two other men, Lieutenant Chen and (the Respondent believed) Detective Campbell. Weeks said that

they wanted to talk to him. They went outside where there were two other members of the service waiting. The Respondent said that he was surrounded and then placed under arrest. He had driven to the hospital in his [REDACTED], and he said that he believes one of the supervisors drove it back.

The Respondent said that he was transferred from [REDACTED] Hospital back to Manhattan Downtown, to the 5 Precinct, where he was processed and charged with rape in the first degree. The Respondent said that he was only told about the rape and did not learn about the other charges until he was arraigned later on that day. Bail was set and posted by [REDACTED], and the Respondent was released that afternoon at approximately 6 o'clock. The Respondent stated that when he was released, his wife and [REDACTED], [REDACTED] were present.

The Respondent testified that the charges brought against him on March 26<sup>th</sup> were eventually dropped, dismissed by the district attorney. The Respondent said that he was arraigned at the Manhattan Criminal Court, and that after he left, "I wanted to get out of there so bad I got on the train at Chambers Street," (at which station he believed it was possible to get the J, M, 4, 5, and 6 trains) to go to his mother-in-law's house. The Respondent said that he believes he was accompanied by both his wife and Yates.

The Respondent said that having reviewed the evidence that was presented by the Department Advocate's office, he has no explanation for the Metrocard records that were presented. When asked if it was possible that anything may have occurred differently than he remembered, the Respondent said:

During that time like I said I left court I was angry, I was distraught, I wasn't probably thinking right this is you know, my world is being turned upside down, my thing was to get out of court I wasn't really worried about anything else. During that time I am not too sure how I can't say I

did because I don't remember actually doing it I may have given him my Metrocard

The Respondent clarified that it was [REDACTED] whom he may have given his Metrocard to, for the sole purpose of going and retrieving his truck, but that he could not say for sure of that is what happened. The Respondent said that he did not go to Queens on the evening of March 26, 2007, and that he was sure he went uptown to [REDACTED] [REDACTED] s house. He stated, "My concern wasn't picking up my vehicle at that point."

The Respondent said that earlier on the 26<sup>th</sup>, before he got arrested, he did have contact with [REDACTED]. He stated that his normal ritual with her while they were dating was to call her in the morning on her cell phone, and then if she did not answer to call her on her home phone. He said that it was a morning wake-up call. The Respondent said that he did not speak to her that morning and that she did pick up the phone and then hung up. He also testified that he did not have any contact with [REDACTED] after he was released.

The Respondent testified that his vehicle is equipped with an OnStar system, which is a hands free mobile device, built directly into the car, which cannot be taken out. To initiate a phone call one would have to press the button located on the rearview mirror. The Respondent said that the next time he saw his car was the next day. When asked if he remembered where he retrieved his vehicle from, the Respondent said, "The only thing I know is [REDACTED] had the vehicle." He said that it was not unusual for [REDACTED] [REDACTED] to borrow his car, and when asked if he remembered if he had picked it up from Queens or where he had gotten it from, the Respondent said, "Well, he was living in [REDACTED] [REDACTED] I believe it was [REDACTED]."

The Respondent said that he was present for the testimony of [REDACTED] and [REDACTED] during the criminal trial, and that he heard [REDACTED] testify about contact he had with [REDACTED]

on the evening of the 26<sup>th</sup>, namely the testimony that he had made a few phone calls to her using his [REDACTED] phone, which was registered in his (the Respondent's) wife's name. The Respondent said that he was also available for their cross-examinations, during which they were asked about their assorted criminal convictions. The Respondent acknowledged that over the course of December 2007, on a number of occasions, he ran [REDACTED]' name in the BADS system, and said he did it a few times to check the status of his license because he was not aware of what it was, and a couple of times because he was filling out a job application and needed to know when his last arrest was.

The Respondent said that the way the BADS system works in terms of name searches is that there are a few ways to access the date, by NYSID number, or by name for instance. The Respondent explained that it is usually the last name that is used, and so one would put in the last name with the search menu from whatever date to whatever end date and that would come up with a whole list, depending on what borough the search was made in.

The Respondent testified that if one typed in the name " [REDACTED]" the first screen would come up with everyone whose last name is [REDACTED]. A person would then have to highlight the one they want and click enter, which would give them access to the record on that arrest alone, not on all of the arrests under the person's name. When asked how familiar he was with [REDACTED] criminal history in the time leading up to his official Department interview, the Respondent said that, "I really didn't really think a lot about it but I knew he was arrested I don't know every single charge in regards to that." The Respondent said that he did not search through all of [REDACTED] arrests in the BADS system,

and said that he did ask [REDACTED] about the extent of his criminal history. The Respondent testified that [REDACTED] told him that he had a couple of felonies from when he was younger. The Respondent said that that conversation took place after the information was brought up in court.

The Respondent affirmed that after his GO-15 he was ordered by the lieutenant who conducted it not to have any further contact with [REDACTED]. The Respondent said that prior to that he only saw [REDACTED] on rare occasions, but that he was someone who he would call to help out in an emergency like this. He said that he used to have a relationship with [REDACTED] as well, back six or seven years from the time of the testimony, but that he had not had one since then, although he would still occasionally be in contact with her through the time of the incidents because she was still a friend whom he would socialize with. The Respondent said that on the night of March 26, 2007 he did have contact with [REDACTED] because he was uncomfortable staying at [REDACTED] as it was already crowded, and so he asked [REDACTED] if he could stay with her overnight because he did not want to go [REDACTED] where he lived.

The Respondent said that he stayed with [REDACTED] that night, a fact which she testified to at the trial. He acknowledged that [REDACTED] also testified that she had a prior conviction for grand larceny. He said that prior to the trial he was aware that she had a criminal history, insofar as he knew that she was arrested a couple of times, but that he did not inquire further of her. The Respondent said that on March 12, 2008 he did a name check for her because she had received a letter from the DMV stating that they were going to suspend her license, and she asked him to look that up for her. He said that it was the same type of check that he had run for [REDACTED] in that when he put in the name

" [REDACTED] every [REDACTED] with a criminal contact would come up. The Respondent said that eventually he found the specific issue that she was asking him to help her with, and that he did not browse through the rest of her criminal history. When asked if he had browsed through it at any other time, the Respondent answered, "No, I don't remember."

The Respondent acknowledged that during his Department interview he was asked similar questions to what he was asked during this hearing and that at the interview he had indicated that he did not recall a lot of these answers. He explained that while looking at all of the paperwork a lot of things do come back to mind.

The Respondent stated that he did not perjure himself or give false testimony in Criminal Court during his trial when he said that he took a train from lower Manhattan to upper Manhattan when he was released from custody that day. The Respondent also affirmed, in the context of Specification No 2, that he did not go to Queens that day.

The Respondent testified that during his relationship with [REDACTED] they did speak regularly on the phone, and that there came a time when he engaged in arguments on the phone with her. He said that there was never a time when he engaged in a pattern of harassing, one-sided phone calls to her, and that in general the way the arguments would play out would be that they would call each other a couple of times back and forth.

The Respondent testified that he never engaged in sex with either [REDACTED] or [REDACTED] without their consent. He affirmed that he never engaged in sexual conduct by forcible compulsion with [REDACTED] or [REDACTED]. Nor was there a situation with either [REDACTED] or [REDACTED] where they said no and he refused to take no for an answer.

The Respondent testified that his criminal trial was heard by a jury and that he testified on his own behalf.

On cross-examination the Respondent testified that as a 17-and-a-half-year veteran of the Department he is aware of the policy with respect to not associating with criminals, but said that it is his understanding that this only applies to convicted felons. He said that prior to his trial he did know about [REDACTED] and [REDACTED]' criminal background to the extent that he knew they had been arrested, but that he did not know about their charges. He acknowledged that he continued to associate with them after the trial. The Respondent affirmed that at the trial he learned that they had been convicted of felonies, and reiterated that he had testified to having run both of their names through the BADS system. He stated that it was also his testimony that he only ran their names in a generic name search and did not look further into the system.

When questioned by the Court, the Respondent affirmed that he was present for [REDACTED] criminal court testimony and heard [REDACTED] testify that after the Respondent left court he [REDACTED] picked him up in his vehicle. The Respondent said that he knew that that was an error, and that he said so in the trial. The Respondent explained that he testified that [REDACTED] testimony was incorrect.

At the time of this hearing, the Respondent said that he was not sure, but he may in fact have given [REDACTED] his Department-issued Metrocard. He said that he had used his Metrocard to swipe in at Chambers Street, and was not sure if he had swiped it again thinking that it had not gone through. The Respondent said that he did not know how it happened that shortly thereafter his Metrocard was swiped again at Sutphin Boulevard, but said that it might have left his possession because he was not even holding his own ID.

When asked who had his Metrocard if he did not, the Respondent stated that

normally his wife would hold onto a lot of his stuff He said that when he was arrested all of his property was taken from him, and that he believes his wife had his ID while he was in central booking The Respondent said that he did not remember if he got property back when he was released on bail, but knows that he swiped into the subway at Chambers Street, right by the courthouse using his official Department Metrocard Once again, he could not answer how it happened that it was shortly thereafter swiped at Sutphin Boulevard, and then again on the Q1 bus line

The Respondent reiterated that he had been previously unaware of [REDACTED]' criminal convictions, and said that he did not see the E-justice report that contained [REDACTED] criminal record and that was entered into evidence at this hearing Having been shown the document the Respondent acknowledged that [REDACTED] had been arrested seven times, and that he had been aware of the arrests He explained that he had heard a little bit [REDACTED] that [REDACTED] had been arrested for (what he had been told) driving without a license, but stated that he had not been aware of anything major He said [REDACTED] [REDACTED] kept a lot of things quiet and so nothing was mentioned to anybody

On redirect examination, the Respondent said that based upon the fact that he left court with his wife and [REDACTED] and the fact that he remembers picking up or receiving his car from [REDACTED], the conclusion he draws about the use of his Metrocard is that his wife might have given it to [REDACTED] for him to use in order to go and retrieve the car He said that, "that is the only way that I can see it" The Respondent reiterated that he had no direct knowledge of how his Metrocard was used, but that he did recall receiving his vehicle from [REDACTED]

When asked by the Court, the Respondent said that he believes he recovered his vehicle from the Bronx, but that he was not too sure

On re-cross examination, the Respondent said that he recalled being asked similar questions during his criminal trial about when the next time he saw the car was, and that he believes that at that time his answer was the next day. He reiterated that he had just testified at this hearing that he got the car from [REDACTED] and that he thinks it might have been in the Bronx but that it might have been in Queens.

The Respondent entered the criminal trial testimony of [REDACTED] into evidence. It was accepted as part of RX D and is summarized below:

[REDACTED] testified that he is a native of the [REDACTED], and that he has been a web designer for seven years. [REDACTED] said that he knows the Respondent because the Respondent [REDACTED]. He said that they are close and spend time together, seeing each other "probably maybe three times a week or something of that nature," and that he and the Respondent spend time doing things together. [REDACTED] acknowledged that he also knows the Respondent's wife, [REDACTED].<sup>1</sup> and that although he does not spend as much time with her as he does with the Respondent, their relationship is a good one. [REDACTED] affirmed that the Respondent is older than he is, and that he has known him all his life.

[REDACTED] stated that at some point on March 26, 2007, he found out that the

<sup>1</sup> This name is spelled as [REDACTED] in the criminal trial transcript. The spelling [REDACTED] was used in all Department proceedings and will be used in this decision.

Respondent had been arrested because the Respondent called him [REDACTED] said that he spoke to [REDACTED] about the Respondent's situation, and also spoke to [REDACTED] at some point during the day to try and find out what was going on He and [REDACTED] made plans to meet up with her at some point towards the evening to find out what was happening and why he was arrested [REDACTED] said that he needed to find out if there was bail, and that he and [REDACTED] got the money to bail him out at around 7:00

[REDACTED] testified that he was present when the Respondent was released from the courthouse He said that after the Respondent was released they drove together to [REDACTED]'s house in [REDACTED]

[REDACTED] He was not sure exactly what time they arrived, but said that it was evening time, and that he stayed for approximately four hours Also present were the Respondent [REDACTED], [REDACTED], and at some point the Respondent left ([REDACTED] thought maybe at around 9:30) while he stayed with [REDACTED]

[REDACTED] stated that he attempted to contact [REDACTED] using [REDACTED]'s cell phone because his own battery was dead He said that he made the call at approximately 10:00, and that he called twice The phone calls were very short He stated, "You know, just trying to find out basically what was happening." [REDACTED] said that he did get to speak to [REDACTED] briefly, and that the phone calls lasted less than 20 seconds and ended with hanging up the phone

On cross-examination, [REDACTED] said that the Respondent is about five or six years older than him, and that although they grew up together he looks up to [REDACTED] [REDACTED] was proud when the Respondent joined the NYPD, and said that he loves him, wants good things for him, and does not want to see him in trouble [REDACTED] reiterated that he

knows the Respondent's wife and that there was a period when they were separated but he did not remember when or for how long. He did know that on March 26, 2007, they were separated but still had a relationship

[REDACTED] said that as of March 26, 2007, the Respondent was living in [REDACTED]. He did not remember where exactly, but knew that it was separate from [REDACTED]. [REDACTED] did not know where the Respondent went after he left [REDACTED]'s home that night, but stated that he went out the back door. He did not know if the Respondent took the subway.

[REDACTED] testified that when he left the Criminal Courthouse with the Respondent on March 26, 2007, he and the Respondent drove in the Respondent's car, a green [REDACTED].

[REDACTED] affirmed that he has been convicted of five crimes in the past, including two felonies. The first time he was convicted was in 1995 for criminal possession of stolen property in the fifth degree. [REDACTED] broke into the car and ripped the radio out. He was convicted again in 1995 for criminal possession of stolen property in the fourth degree (a felony) for stealing a vehicle, and again that same year for possession of burglar's tools.

[REDACTED] said that they were actually just tools in the trunk of the car that he used to work with every day, screwdrivers and things of that nature, and that he had not really been committing a crime. He just happened to have what could be considered burglar's tools.

[REDACTED] acknowledged that he pleaded guilty anyway, despite the fact that he had sworn to tell the truth, because due to his criminal record the judge was going to offer him more time and so he just wanted to get it over with and get on with his life. He claimed that he did not lie to the Court though, because he did in fact have the tools and so was guilty of

having tools that are considered burglar's tools [REDACTED] confirmed that he was convicted again in November of 1995 of attempted grand larceny, and in 1998 of criminal possession of stolen property (a felony) [REDACTED] said that he did not remember the nature of the conviction, i.e. what it was for, but he did remember that he spent time in jail for it.

On redirect examination, [REDACTED] agreed that his last conviction was approximately ten years before the time of this trial.

The court entered the Respondent's testimony into evidence as Court Exhibit 1. It is summarized below:

The Respondent testified that he is a police detective in the NYPD, currently assigned to the Queens Warrant Squad where he has worked for the past two years. His duties there are mostly administrative in that the unit confirms warrants with outside agencies and sets up extradition for sending subjects back to the city to answer to charges. At the time of the trial the Respondent had been working in the Department for 16 years, and prior to his assignment at the Queens Warrant Squad he had spent time in Manhattan Juvenile Crime, Manhattan Warrants, the Chief of Detectives' office, and the Housing Bureau. Over the course of his career he has received five excellent police duty medals and two meritorious police duty medals.

The Respondent said that he is separated from his wife, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Respondent testified that over the year or so leading up to March 26, 2007, after the time that he had broken up with [REDACTED], he had relationships with two women, [REDACTED] and [REDACTED]. He met [REDACTED] first, and they had an on and off relationship where they would see each other for a couple of months then wouldn't see each other for a while. They would have a consensual sexual relationship but at times would get into verbal disputes and then would break up and then get back together. In May of 2006 the Respondent met [REDACTED] at a Little League where, as president, he was preparing a tournament team. They entered into a romantic relationship where he would see her at least three or four times a week, and he said that he would partially stay with her. He indicated that there would be times where he would be at her house four or five times a week and sometimes one or two times. The Respondent said that he was maintaining his own apartment at that point as well.

When asked how he would characterize his relationship with [REDACTED], the Respondent said that, "Most parts it was smooth," but that there came a time when it was not so smooth. There were specific problems that would come up, when [REDACTED] would call. The Respondent testified that [REDACTED] would run right up to hear his conversations or ask who was calling. He said that most of the time it was not even [REDACTED] on the phone, but his sister, but that [REDACTED] was getting jealous.

According to the Respondent the only time that there was a physical confrontation between them was when [REDACTED] came at him with a knife in August of 2006. He had

received a call from [REDACTED] and [REDACTED] got upset. She went into the kitchen drawer and pulled out a knife, and came at him with a jabbing motion. The Respondent said that he was able to grab her wrist and make her drop the knife, and that he told her to calm down to the point where once she was calm he was able to pick up the knife and put it back in the kitchen and hide it. The Respondent said that neither before that nor after that did he ever punch or hit [REDACTED]. Then never told him that she was calling the police, and to his recollection she never did. The Respondent said that he never had any interaction with any police officer about his relationship with [REDACTED] before March 26, 2007.

The Respondent said that there came a time when [REDACTED] saw a picture of [REDACTED] in his wallet. The incident happened sometime around November of 2007, a few months after the knife incident. The Respondent said that he never gave her permission to go into his wallet and that this was the first time that she had. He had just come back from vacation in South Carolina where he had been visiting his parents, and had come over to spend time with [REDACTED]. They were lying in bed when she decided to pull his wallet out of his pants, which is when she noticed the picture. The Respondent asked for the picture, which was the only one he had of them, back, but instead [REDACTED] ripped it up. The Respondent reiterated that to this day he has never hit nor punched nor harmed [REDACTED] in any way. He did try to grab her hand to get the picture away, but he said that he never hurt her when he did so, and that she did not appear hurt as a result of it.

The Respondent said that in August 2006, he believes after the knife incident, he accompanied [REDACTED] to the hospital. [REDACTED]  
[REDACTED]

[REDACTED] He stayed overnight to reassure her. The Respondent said that from that point

until the time of the argument over the picture in the wallet, the relationship seemed to be okay, and that after the wallet incident things started to get rocky Any time his phone would ring [REDACTED] would want to know who was calling and would jump right on him to hear the conversation and see what name or number came up on the caller ID There came a time in October when the Respondent found out that she was listening to his voicemail He found out when she actually mentioned one of them to him It was a message from a female voice asking the Respondent to call her back, and the Respondent said that he told her they were from his sister, and, having verified that with the callback number, told her that she needs to calm down and not get jealous every time the phone rings

The Respondent said that from October 2006 and onwards he had not seen [REDACTED] because apparently she was in another relationship with someone else The next time he became involved with her was in early December He described it as "more of a sexual relationship, it was not a regular relationship " He was also still continuing his relationship with [REDACTED]

Around the end of January, [REDACTED] found out about [REDACTED] when she went through his phone and wrote down numbers [REDACTED] called the Respondent and said that [REDACTED] had called her From that point on his relationship with [REDACTED] was pretty much done, although he did continue having a relationship with [REDACTED] He said that it was going well, but that she would get upset when the phone would ring

The Respondent stated that there came a time when his relationship with [REDACTED] worsened On March 24, he went bowling with friends and told her that he may or may not be coming back that evening She called him a number of times on his cell phone and

he did not answer. Then had both a cell phone and a home phone, while the Respondent had only a cell phone and the phone in his OnStar system. When the Respondent did not pick up the phone she stopped calling and he continued having fun with his friends before going back home to his apartment for the night. On March 25, he tried calling her and ended up leaving a message for her to call back.

The Respondent said that he did not have any contact with [REDACTED] or with [REDACTED] that day, then clarified that he had in fact seen [REDACTED] on Sunday the 25<sup>th</sup>. After work that afternoon he went to her apartment and was proceeding up the stairs to her apartment as she was coming out. She was with her son [REDACTED] and seemed very upset and did not want to talk. The Respondent asked her why she was so angry but [REDACTED] said she did not want to say and kept walking, so he told her that he would call her later. Sometime late that evening he called to find out what was going on, and to tell her that if there was a problem in their relationship that they could work it out. That was the extent of their conversation and the last contact that the Respondent had with [REDACTED] on the 25<sup>th</sup>.

The Respondent stated that on the morning of March 26, 2007, the day that he got arrested, he called Then from the OnStar system in his truck on the way to work. The OnStar system is a cell phone system embedded in the car that cannot be removed. It has a separate phone number assigned to it. The phone number assigned to the Respondent's [REDACTED] was [REDACTED]. The Respondent explained that the Queens Warrant Squad is not easily accessible by public transportation and that if he had to get there by public transportation he would have to take the E or the F to 179<sup>th</sup> and Hillside Avenue, then take a bus to 235<sup>th</sup> Street and then walk up the boulevard. He also said that there were times when he was working and was asked to use his personal vehicle instead.

of a departmental police vehicle

The Respondent said that he called [REDACTED] at about 6:00 or 6:30 that morning, like her normally did, to wake her up. He called her twice, once on her cell phone and once at home just to see if she had gotten up. The conversation was very brief, "It was more good morning and she hung up." [REDACTED] did not say good morning to him.

The Respondent said that at work that morning he was asked to go to [REDACTED]

[REDACTED] Hospital because a co-worker was [REDACTED] and he was there to watch him and take care of his family. The Respondent drove his vehicle to the hospital, and at some point he received a call from the lieutenant asking where he was. Lieutenant Weeks and the sergeant came up with another person whom the Respondent later learned was Lieutenant Chen from IAB. He was told that Chen had a couple of questions to ask him, and was asked to come along with them. They proceeded out and at some point it dawned on the Respondent that he was being arrested. The detective who handcuffed him said that the lieutenant would tell him what was going on, and the lieutenant told him that he was being arrested for rape.

The Respondent testified that when he was arrested his car was still in the parking lot, and that he had a conversation with Weeks about moving it. To his knowledge the car was moved. The next time he saw it was the next day, in the parking lot at Queens Warrant Squad. He said that he thinks he got to his car at around 10:00 or 11:00 a.m. on March 27.

The Respondent said that after he was arrested he was brought up to the courthouse to be arraigned, and that by the time he had gotten through all of the processing he was not arraigned until approximately 4:30. His family posted bail and he

was released at around 6:00. He said that his wife, [REDACTED] and [REDACTED] [REDACTED] were there.

The Respondent testified that upon leaving the court they got on the train and went uptown. He said that he believed [REDACTED] made a mistake when he said that he (the Respondent) had driven uptown in the [REDACTED]. [REDACTED] had referred to [REDACTED]; and the Respondent said that he did not know whether he was referring to the same [REDACTED] or that he (the Respondent) had been talking about driving previously, but did say that [REDACTED] does not have a separate [REDACTED] type vehicle registered to her. The Respondent reiterated that his recollection is different from [REDACTED] testimony, and that he believes that he took the train uptown.

The Respondent said that he went to [REDACTED]'s [REDACTED] house at [REDACTED]. He sat around and had something to eat and was pretty upset with the accusations. The Respondent said that he stayed there for a while and then left by himself. He took a cab to [REDACTED] house because he could not stay at [REDACTED]'s [REDACTED] house, since there were too many people. He did not want to go home because he felt very uncomfortable, and [REDACTED] lived closer, so he asked [REDACTED] if he could stay at her house. At the time she was living at [REDACTED].

The Respondent said that when he was arrested and processed they took his cell phone away and did not give it back when he was released. He did not get it back until a later date. The Respondent testified that he did not have a phone with him when he went to [REDACTED] house, and that he stayed there overnight. He said that he did not make any phone calls to [REDACTED] on the night of March 26.

The Respondent said that to his knowledge [REDACTED] had three cell phones in her

name her own phone and her [REDACTED] phones The phone number [REDACTED] belonged to [REDACTED] phone The Respondent said that he never had control of that phone on the night of March 26, and does not know where the phone was on that night

The Respondent stated that during the course of his relationship with [REDACTED] he never physically or sexually assaulted her, and never raped her He said that he never had any interaction with the police about his relationship with [REDACTED] before March 26, 2007

On cross-examination the Respondent testified that this trial was not the first time that he had a disciplinary situation during his time at the NYPD He was placed on modified duty in February 2006 because of a verbal dispute with a girlfriend, during which he allegedly grabbed her arm He was on modified duty for a year

In addition to having been previously modified, the Respondent acknowledged that back in February of 2002 he was suspended without pay for 23 days as a result of an off-duty dispute with another officer who was on-duty The Respondent said that that dispute occurred partially because the on-duty officer issued his friend a parking summons, and partially because, "First of all, we were always instructed if you have a dispute with an officer on duty or not you can request a patrol supervisor A patrol supervisor came to the scene and he asked me for my ID I told him I will show you my ID at the command, not in the middle of the street We went back to the command" The Respondent said that after that he was suspended for 23 days He also said that the girlfriend who made the complaint in 2006 was [REDACTED], with whom he had a relationship in 2005 and partially in 2006 [REDACTED]

[REDACTED] The relationship ended a couple of months after that He was not seeing any other women at the same time that he was

seeing [REDACTED], and had been separated from his wife since 2004

The Respondent said that he is still separated from his wife but maintains a relationship with her [REDACTED] + He said that both [REDACTED] have cell phones, and that he knows they do because they have shown them to him although he has never used their cell phones

The Respondent stated that his relationship with [REDACTED] started in early 2006 after he had broken up with [REDACTED] He acknowledged that [REDACTED] had testified that she and the Respondent had dated for about five years, and that he was dating [REDACTED] when he was still with his wife, before they were separated He agreed that [REDACTED] had testified that he had already been separated from his wife when she was dating him, and that they broke up about three years prior to the time of this trial, back in 2005 The Respondent clarified that he was not dating [REDACTED] and that it was a sexual relationship where he would just see [REDACTED] on occasion He said that he never told [REDACTED] about [REDACTED] because he had finished things with [REDACTED] by the time that he started to see her Since 2005, he has not had any sort of sexual relationship with [REDACTED] at all, she has another relationship with another person The night that he stayed over at her house, March 26, 2007, he slept in her living room

The Respondent said that he started seeing [REDACTED] in early 2006, and that he had a sexual relationship with her He then started seeing [REDACTED] in May of 2006, he pursued [REDACTED] and began to see her unrelated to her son's Little League He explained that the relationship with [REDACTED] was on-and-off, and so he was not seeing them at the same time When asked if there were times when he had a relationship with both [REDACTED] and [REDACTED] at the same time, he said that he was more in a relationship with [REDACTED] while

[REDACTED] was an on-and-off thing where he would not see her for a couple of months and then would see her. It was a sexual relationship.

The Respondent said that he told [REDACTED] about [REDACTED] when he met her in May. He clarified that he told her that [REDACTED] was a woman he had seen in the past and was not with anymore. He said that he did not tell [REDACTED] that he was also seeing [REDACTED] on the side because that is not what he was doing. He acknowledged that there were times during the course of his relationship with [REDACTED] that he was having sexual relations with [REDACTED], and reiterated that it was an on-and-off sexual relationship, and not a continuous thing. He did not make it clear to [REDACTED] that he wanted to see other women, and continued to see [REDACTED] on occasion in a sexual manner while giving [REDACTED] the impression that he was in an exclusive relationship with her.

The Respondent said that he was not aware that [REDACTED] was a convicted felon, and that he never talked about that or discussed it with her. He also said that he has known [REDACTED] since he (the Respondent) was about five or six years old. When asked if he knew about [REDACTED] criminal history, the Respondent said that he knew about him getting into trouble, but did not know the extent of the charges. He pointed out that a lot of the charges are from over ten years ago. When asked again if he knew about them, the Respondent replied, "We don't in the family constantly monitor what everybody does. Everybody still has their own individual lives. We hear about it and we move on."

When asked if it mattered to him whether [REDACTED] was arrested for a misdemeanor or a felony, the Respondent said that it did not matter that he got arrested as long as he was not doing any jail time or that the case worked out in his favor. The

Respondent said that he previously did not know whether or not [REDACTED] spent any time in jail on one of those two felonies, and that [REDACTED] tries to keep things private

The Respondent agreed that he had been in court for the course of this entire trial proceeding, and had heard all of the other witnesses testify and had seen the physical evidence that was entered into evidence in this case. He said that before coming to court on the day of this testimony he had an opportunity to examine one phone record with his attorney, and stated that he believes some were missing. When asked, the Respondent acknowledged that he had in fact had an opportunity to see the OnStar phone records, and the Sprint phone records, with his attorney, and that he had discussed those records with his attorney before he came to testify.

The Respondent reiterated that the night he was arrested he went to stay at [REDACTED]'s home, and that [REDACTED] lives [REDACTED]. He did not feel comfortable staying there and so went to [REDACTED] house. He did not feel more comfortable at [REDACTED] house, but was uncomfortable at [REDACTED]'s house because of the fact that it was crowded. The Respondent said that he took the subway to [REDACTED] house, and when asked which line he took he said that he went across the park to take the 2 and the 3 train. [REDACTED] and her mother live [REDACTED] while [REDACTED] is on [REDACTED]. [REDACTED] The Respondent reiterated that he walked across Central Park and took the 2 or 3 train, but he did not remember which.

The Respondent stated that when he was arraigned and came before the judge he was instructed that there was going to be an order of protection issued, and that he was absolutely not to call the person listed in the complaint. He was given a copy of the

order, which instructs him to absolutely not contact [REDACTED] He was not sure what time he was given the order, but did say that he signed it, and that he was released at about 6:00

On redirect examination, the Respondent was asked if he recalled testifying during direct examination that he had taken a cab from [REDACTED]'s mother's home to [REDACTED] home, and if he recalled whether he took a subway or a cab on that day. The Respondent said that he did in fact take a cab from [REDACTED]'s mother's home to [REDACTED] home, and that he took the train up to [REDACTED]'s home. When asked about his statements in regard to walking across the park, the Respondent said that it was because [REDACTED]'s mother lives [REDACTED] so he walked [REDACTED] to take the train. He did not remember the time.

The Respondent reiterated that when he left court he took the train, he believes it was the [REDACTED], and that he later went to [REDACTED] house across town in a cab and did not take the train at that point.<sup>2</sup>

#### The Respondent's Official Department Interview

The Respondent was the subject of an official Department interview on January 14, 2009. The tape recording of that interview is DX 5a and the transcript is DX 5b.

The Respondent said he knew [REDACTED]. He met her at a baseball game in [REDACTED] two years ago. He was involved with her for about two years and they had a romantic relationship. He had sex with her. He asserted that the sex was always consensual and that he never forced her to have sex with him.

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<sup>2</sup> The statements of two other witnesses who testified at the criminal trial were received in evidence. Then's testimony is DX 7, and [REDACTED] testimony is part of RX D. The relevant portions of those testimonies are summarized in the Findings and Analysis portion of this decision.

The Respondent acknowledged that he apologized to [REDACTED] for forcing her to have sex with him (this was in a controlled phone call from the D A 's office) He said that he believed this occurred on Sunday, the day before he was arrested They had an argument He told her they needed to work things out He stated, "She says oh, why did you—why did you do that to me, and I said what—what do you mean, what did I do to you? She, uh, I really don't remember everything that was said in it I'm sure it was recorded " He then said, "But it was only to get her to talk with me I did not do anything to her "

When asked, "Did you apologize for forcing yourself to have sex with her?" the Respondent answered, "I did say that, just to have a conversation, no actually, no I did not I – I don't recall the exact statement, but it wasn't what you just said " The Respondent then denied apologizing. After further discussion among those in the room the Respondent then agreed that he apologized After further discussion the Respondent said, "No, that's what she said and I disagreed with her "

The Respondent agreed that he could have had an argument with [REDACTED] in regard to her intercepting his cell phone messages but he could not remember He agreed it is possible that she heard a message from one of his other girlfriends He agreed that while he was seeing [REDACTED] he was married and also had other girlfriends He has been married for ten years and separated for four years

The Respondent stated that he was seeing [REDACTED] and he was also seeing [REDACTED] His wife is [REDACTED]

He denied slapping [REDACTED] across the face or twisting her arm When asked if he recalled an argument in November 2006 the Respondent answered, "Possibly yes " He denied punching [REDACTED] during that argument

He denied punching [REDACTED] repeatedly in the face during an argument in January 2007 He agreed that he went to [REDACTED] house in February 2007 He said the last time he saw her was two days before he was arrested He denied raping her

He does not have any children with [REDACTED] The Respondent said that [REDACTED] works in the Housing Authority To his knowledge she is not and has not been employed by the NYPD He said that [REDACTED] works for the NYPD at the 30 Precinct

The Respondent acknowledged trying to contact [REDACTED] over five times on March 24 to March 25, 2007 He said several were because he had not heard from her He noted that he would call her in the morning to get her ready for work He said that he did make those calls and that she eventually called him back. He said she called him back on Sunday the day before he was arrested

The Respondent agreed that he was arrested on March 26, 2007 on charges of rape made by [REDACTED] He remembered receiving an order of protection, "it's what you normally have in any DV case, no communication, e-mail, phone, through a third party, so on and so forth " He agreed that he was personally served with that order of protection He denied violating that order of protection by calling [REDACTED] at about 20 00 hours He denied calling her after he got out of jail and he has not attempted to call her since The Respondent acknowledged that he was arrested for violating that order of protection

He gave his cell phone number as [REDACTED] He also has an OnStar number but he did not recall it He agreed that he was familiar with [REDACTED] That relationship began, he said, about three years ago, in July 2006 He acknowledged that he had sex with [REDACTED] He denied ever forcing her to have sex

The Respondent stated that he was acquitted after a trial on the criminal contempt charges. He acknowledged that he called [REDACTED] and I [REDACTED] as witnesses to testify as to his whereabouts on the day in question.

[REDACTED] he said, testified that he made a call to [REDACTED] but the Respondent did not know about that call. The Respondent said he made that statement a "couple" of days after his arrest for criminal contempt. The Respondent said [REDACTED] testified to his whereabouts at the time of the phone calls. He said he was at [REDACTED] apartment. The Respondent acknowledged that he asked those people to testify.

[REDACTED] s, he said, [REDACTED]  
[REDACTED] When asked, "Are you aware of the extensive felony arrest history and conviction of record of [REDACTED]?" the Respondent answered, "No, I'm not."

The Respondent said he is now aware of [REDACTED]'s arrest history and he learned of it at the criminal trial. He learned, he said, when it was mentioned by the DA as she was cross-examining [REDACTED], he said, is 33 or 34 years of age.

The Respondent then said that he was aware that [REDACTED] had been arrested before the trial but he did not know the extent of his arrests and whether they were misdemeanors or felonies. He again acknowledged that "Yeah, I know, yes, he'd been arrested, Yes I did know that." The Respondent that said he did not know how many times [REDACTED] had been arrested nor did he know what [REDACTED] had been arrested for.

When asked if he ever asked [REDACTED] (about his criminal record), the Respondent stated, "Did I ask him? First of all he would not say everything, so I only got bits and pieces, yes." When asked what, [REDACTED] said "Uh, what was it? One, like, unauthorized use of a vehicle or something like that. I'm not too sure of everything. And did – and

most of these arrests were from a while ago I don't recall everything " The Respondent agreed that he was aware that [REDACTED] had an arrest history

He said that he and [REDACTED] had a sexual relationship prior but that now they are friends The sexual relationship was about ten years ago He said the last time he saw [REDACTED] was, "Um, I guess a couple of weeks ago " He agreed that he and [REDACTED] are still friends He then said that he saw her "once in a blue moon "

He said he sees [REDACTED] once every two or three weeks [REDACTED] he said, lives [REDACTED] while [REDACTED] lives [REDACTED]

He said he learned of [REDACTED]' criminal history when the DA cross-examined her and as a result he is aware of her criminal history now He agreed that as a result of the trial he became aware that [REDACTED] is a convicted felon When asked if he continues to see [REDACTED] he said, "No I don't," When confronted with the fact that he just said he saw her a few weeks ago the Respondent stated, "Hold on Hold on Yes, I have seen her, Okay The only time I've seen her is only when she had a computer problem I do not go on there, go to see her on occasion I do not do that The only time I seen her was when she had a computer problem and that was weeks ago I do not see her any other time" He added that he is still friends with her but he does not call her He said the last time he called her was weeks before in connection with her computer problem He was then asked to provide her cell phone number, which he did

After a break the Respondent returned and stated, "Um, there have been a couple of calls, uh, between me and [REDACTED], more currently Um, she inadvertently made a payment on her – on her account using my card It was by accident Um, we're trying to get—" The questioners then confirmed that they were talking about the

## Respondent's credit card

He said while using her computer he left his credit card to make a payment and his credit card stayed on the account. He said he noticed that money was taken out of his account and applied to her account. He had called her numerous times telling her what happened. He said she tried to explain and then they discussed how to get the matter resolved. The amount in question was \$210.

Explaining how his banking information got on [REDACTED] ' computer, he stated "Because at one time I was not staying at home, I was staying at her house, and I had used her - computer numerous times." He said this was over two years ago when he stayed at her house for over four months.

The Respondent acknowledged that his trial had been in April of 2008 and said that between April and December 2008 he spoke to her "[n]ot many" times.

Going back to the phone call to [REDACTED] the Respondent said that [REDACTED] made the call and that he did not. The Respondent stated "Let's clear something up. There were a couple of calls made that day from my OnStar system. Those calls were made in the morning. That was prior to my being arrested."

The Respondent said he did not know [REDACTED]'s work number. He said he was surprised to see a record of a phone call made to her from his phone at eight o'clock. He again agreed that he received an order of protection. He said it was not possible that he made the call.

The Respondent stated that he did not recall running the name of [REDACTED] using the Department computer system. When asked if it was possible that he ran the name of [REDACTED] in the system he said, "I don't recall that." He did not recall

running the name of [REDACTED] or [REDACTED] in the Department computer system. He acknowledged running his own name in that system. He said it was to get an accident report. He did not remember what year that was. He then acknowledged that he probably ran it a few more times.

He did not recall running [REDACTED] on October 18, 2006. He did not recall running [REDACTED] license plate on October 31, 2006. He did not recall running [REDACTED]'s VIN on his [REDACTED] on March 1, 2007. He acknowledged his tax number on a report held by the investigator.

Asked if he ran [REDACTED] in the system on December 9, 2007 at 07 12 hrs and again at 13 35 hrs he said it was possible but he did not recall. He said he did recall running [REDACTED] in the system on November 20, 2006 saying it was "just a basic license check, background license stuff." He agreed that it was not for Department business.

He did not recall running [REDACTED] in the computer system on March 12, 2008, saying only that it was a "possibility." He gave the same answer as to running [REDACTED] on June 12, 2006. He denied running her on January 15, 2008. He denied running [REDACTED] [REDACTED] on December 2, 2007. He agreed that he accessed [REDACTED] V [REDACTED] "a couple of times" but did not recall the date being January 11, 2007. He agreed this was not official Department business. He did not recall if he also ran information for [REDACTED] on February 15, 2008 and April 27, 2008.

He recalled checking himself on the system after an accident, "a few times" after his arrest and again after the trial. He agreed that he accessed information on the computer system about himself or his vehicles on September 11, 2006, October 18, 2006, December 17, 2006, January 11, 2007, July 26, 2007, November 8, 2007, November 9,

2007, December 2, 2007, December 27, 2007, February 3, 2008, March 5, 2008 and March 9, 2008

He also admitted that it was possible that he accessed [REDACTED] in the computer system. He also agreed he looked up a license plate on the computer system on June 9, 2007. He agreed that none of these checks was for official Department business and he acknowledged that he was aware that retrieving information that was not related to official Department business was prohibited.

After another break the Respondent was advised not to associate with [REDACTED] or [REDACTED]. He admitted again running names in the system saying "it could have been boredom."

#### FINDINGS AND ANALYSIS

As noted in the introduction of this decision, the seven specifications in this case more or less reflect the original criminal charges against the Respondent. There are two significant problems with this set of charges. The first has to do with the evidence or lack thereof that the Department put forward to prove the charges. The second is that the district attorney determined not to pursue these charges criminally essentially because their analysis was that the crimes were not committed.

The complainant in all of these cases, [REDACTED], did not testify at this proceeding. The Department offered hearsay testimony from her through Loo as part of its effort to prove these charges. It also offered in evidence [REDACTED] testimony from the criminal contempt trial. This prior testimony is hearsay but it is different than most hearsay in that

the Respondent had an opportunity to confront [REDACTED] when his attorney cross-examined her

As to the district attorney's decision not to prosecute these charges the Respondent entered into evidence worksheet number 46, prepared by Loo, outlining the reasons for this decision (RX A)

In worksheet 46, Loo noted that he spoke to ADA Jessica Lynn regarding progress in the criminal case against the Respondent. She advised Loo that all the charges except for criminal contempt were being dropped.

ADA Lynn told Loo that based on an interview conducted by sex crime expert investigator Edward Tacchi it had been determined that the events described by [REDACTED] do not constitute rape.

Loo also noted in worksheet 46 that the allegations of assault were dropped because "it was discovered during the interview that [REDACTED] had initiated the physical altercations and the Detective Michael Steward (the Respondent) fought back in self defense."

ADA Lynn also told Loo that the phone harassment charges were also dropped because phone records indicated that "too many phone calls were made back and forth between the C/V and subject officer to establish that one was harassing the other."

Clearly these charges were not dropped because of a lack of cooperation on the part of [REDACTED]. Not only did she make herself available for the interview with Tacchi but she testified in the criminal trial on the contempt charge. Nor were the charges dropped because of problems of proof or because of concerns with [REDACTED] credibility. The reasons stated for dropping these charges go to the issue of legal sufficiency and of

course must be given careful and strong consideration in determining the specifications in this case

Specification No 7 charges the Respondent with aggravated harassment in the second degree, a crime under the Penal Law The specification alleges that "on, about, and/or between September 2006 March 6, 2007, with intent to harass, annoy, threaten or alarm another person, did communicate with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm "

A review of the testimony by Loo and the other Department witnesses in the current proceeding indicates that there was no testimony about any phone calls except for the ones alleged to have been made by the Respondent on March 26, 2007

There was testimony at the criminal trial about phone calls on March 24, 2007 going into March 25, 2007 before the Respondent's arrest There was also testimony about alleged calls made on March 26, 2007

The calls on March 24 and 25, 2007 relate to an alleged series of phone calls the Respondent made to [REDACTED] that day It is difficult to tell exactly what these phone calls were about from the criminal trial minutes but it appears that another girlfriend of the Respondent's told [REDACTED] to report an alleged rape that occurred on February 26, 2007 It is not clear from the record how the Respondent learned that the other girlfriend knew about this event and was talking to [REDACTED] about it What is clear is that [REDACTED] claims there were many phone calls

The March 26, 2007 phone calls are the same phone call or calls that are the subject of the criminal contempt charge that was the subject of the criminal trial and are

embodied in Disciplinary Case No 82893/07, Specification No 1

In analyzing the evidence related to this specific charge this Court is struck by how thin the evidence is and how tangential it is to the specification. The specification covers a period from September 2006 to March 26, 2007 yet the only available evidence relates to the last three days of that period.

The statute requires that the calls be made with intent to harass, threaten or alarm another person. There is no testimony that any of these phone calls was made with that intent or that those phone calls achieved that result. For instance, with regard to the March 24 – March 25 calls, [REDACTED] testified that the Respondent did not know that she was going to report the alleged rape to the police. The conversation she described was calm. It does not appear that she was annoyed, threatened or alarmed and if she was, she certainly did not provide any testimony to that effect.

Additionally, worksheet 46 records that the assistant district attorney advised Loo that the Respondent and [REDACTED] called each other numerous times, undermining the charge that one person was harassing the other.

Two of the calls allegedly made by the Respondent on March 26, 2007 did not result in communication between the Respondent and [REDACTED]. One was answered by [REDACTED] at a time when [REDACTED] was not home. [REDACTED] did not answer the other call when she saw the Respondent's OnStar phone number appear in her caller ID.

There is only one telephone call on March 26, 2007 in which it is alleged that the Respondent and [REDACTED] spoke to each other. This call occurred after 9:00 pm and was allegedly made from a number [REDACTED] did not recognize. Then testified that the only thing that was said to her was "hello" and she hung up. While this Court will address this

alleged phone call again when it discusses the criminal contempt charge, with regard to whether this call constituted aggravated harassment, it notes there is no testimony to indicate that [REDACTED] was annoyed, threatened or alarmed by this call. There is another problem of proof as to this phone call as [REDACTED] testified that, while she believed the caller was the Respondent, she was not certain of it.

The Department has not established all of the elements of the crime of aggravated harassment in the second degree and the Respondent must be found Not Guilty.

Specification Nos 1, 2 and 3 charge the Respondent with assault in the third degree under the Penal Law. Specification No 1 lists the date of the incident as sometime between August 2006 and September 2006. Specification No 2 lists the date of the incident as November 2006 and Specification No 3 lists the date as between January 20, 2007 and January 27, 2007. The rest of each of these specifications are identical and contains pure boilerplate language. The acts that the Respondent allegedly committed are not stated nor are the alleged injuries set forth. Indeed, even the location and victim are not named.

In his testimony at this proceeding, Loo was asked generally to describe [REDACTED]'s injuries on the "occasions" that she was assaulted. He lumped all of the alleged injuries together and provided no specific facts, dates or circumstances. Loo's testimony failed to provide information that would allow this Court, in any way, to ascribe particular conduct to a particular specification.

The Department also offered the transcript of [REDACTED] testimony at the criminal trial. Culling through that transcript, there is some testimony to consider on the issue of assault. [REDACTED] testified that sometime near the end of August or the beginning of

September 2006, she saw or heard a message on the Respondent's phone apparently involving another girlfriend of his. She said that for two or three days things were normal then they were not normal because "it would always stay in my head what happened." She said their relationship continued and she continued to have sex with him.

[REDACTED] did not testify about an assault in that time period and her testimony moved on to November 2006.

At that point in time, [REDACTED] said she found a picture of his baby and the mother of his baby in his wallet. When she confronted the Respondent about this he apparently did not answer and demanded the picture back. She refused to give him the picture. That is when she said "the big problem started." The big problem was a physical fight in which he held her hands and she scratched him in the face. She said he hit her both with an open hand and with a fist. She claimed she had bruises on her body, buttocks and lips. She claimed he would not let her out of the house so she went to the bathroom where she wound up in the tub. The next day she said she could not go to work.

After that the relationship, she said, deteriorated. She said another incident happened, but she did not remember if it was the beginning of January or February. She found the number of another woman on his phone and she called her. Her testimony on this subject trailed off and she never described any physical altercation at that point in time (she did go on to discuss the alleged sexual assault which will be analyzed later in this decision).

The topic of this alleged incident came up on cross-examination. She again claimed that she could not go to work the next day and stayed in her room to avoid her children yet she could not remember if that was the night she went out to get her hair

done

On cross-examination [REDACTED] was also asked about a time she attempted to attack the Respondent with a kitchen knife. She answered that she thought this was the "second time" and that she was going to testify about it but she was interrupted by counsel's objection.

She described the incident as one in which she ran into the kitchen and got a knife. When she approached the Respondent he grabbed her by the wrist "hard." She denied that she intended to stab the Respondent and said she got the knife because he had been hitting her.

On cross-examination she also testified about an incident in which he had grabbed her wrists. She acknowledged that prior to that she had been pushing him to get him to tell the truth. She agreed that he grabbed her wrists to stop her from pushing him.

Among the many problems with this testimony regarding the alleged assaults is that it is disjointed. With the exception of the alleged November incident, it is difficult to determine what incident happened when. The second problem is that there is insufficient evidence of physical injury, an element necessary to prove assault. The Penal Law defines physical injury as impairment of a bodily function or substantial pain. The scratches and bruises of the alleged November incident might make out physical injury if there were testimony about substantial pain. There was not. There was simply no effort in the criminal trial to establish all of the elements of assault and this is not surprising because the Respondent was not on trial for the assault.

Further, consideration needs to be given to the report contained in worksheet 46. It must be assumed that the assistant district attorney and/or investigator Tacchi had an

opportunity to question [REDACTED] about these assaults and put together a more coherent narrative than the one that came out in testimony at the trial. Their conclusion was that in each of the alleged assaults [REDACTED] was the initial physical aggressor and that the Respondent's actions were in self-defense.

For all of these reasons, the Court finds that the Department has not met its burden of proof and the Respondent is found Not Guilty of Specification Nos 1, 2 and 3.

Specification Nos 4, 5 and 6 deal with a sexual act that allegedly occurred on February 26, 2007.

The evidence regarding this incident is found in the testimony given by [REDACTED] in the criminal trial. Her testimony on this issue was clear and coherent. She testified that they had been speaking in the living room and that he wanted to make love. She said no because "he was dirty from someone else." She testified that, "He grabbed me by the waist and he took me to the bedroom." She said she was wearing jeans and had on underwear. "He took me to the bedroom and I asked him to release me and he wouldn't." She continued, "He put me on the bed in my bedroom and started taking my clothes off." When asked what she was doing at the time, she responded, "Nothing, I was just moving and telling him to leave me alone." She said "He kept doing it, taking my clothes off. He tried to take his clothes off."

[REDACTED] testified that she had sex with the Respondent that night, and that she did not want to. She said that she told him that and he had sex anyway.

The cross-examination of [REDACTED] on the issue of this sex act had to do with the fact that she apparently told the police several days after this incident that she had had consensual sex with the Respondent.

Loo also testified about this sexual encounter. He said that a controlled phone call was made and that in that phone call the Respondent apologized to [REDACTED] for having sex with her against her will.

Again, it is necessary to examine worksheet 46. The district attorney indicated to Loo that the sex crimes expert Tacchi had determined that the acts described by [REDACTED] did not constitute rape.

Rape in the first degree is a class B violent felony and requires a showing that "forcible compulsion" was used. Forcible compulsion involves the use of physical force or a threat that places a person in fear of immediate death or physical injury, People v. Mingo, 12 NY 3d 563 (2009). The assessment by the district attorney that events described by [REDACTED] do not establish rape appears to be based on the fact that the amount of force used by the Respondent did not amount to "forcible compulsion." Certainly that is the conclusion of this Court after reviewing [REDACTED]'s testimony. The Respondent is found Not Guilty of Specification No 4 which charges rape.

The discussion set forth in the worksheet does not discuss the lesser charges of sexual misconduct and sexual abuse which are present in the instant disciplinary action. Specification No 6 alleges that the Respondent committed the crime of sexual misconduct, in violation of section 130.20 of the Penal Law. Sexual misconduct is a class A misdemeanor. A person is guilty of sexual misconduct when he or she engages in sexual intercourse with another person without such person's consent.

That crime has been established. [REDACTED]'s testimony is credible, the Respondent apologized in the controlled phone call, which is a form of admission. Based on all of the above, the Respondent is found Guilty of Specification No 6.

Specification No 5 alleges that the Respondent committed the crime of sexual abuse under section 130.55 of the Penal Law. Sexual abuse is a Class B misdemeanor. A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent. Sexual abuse requires the additional element of "sexual gratification" (see People v. Saddlemire 121 AD2d 791 3<sup>rd</sup> Dept., 1986) which was not explicitly proven. As a result, Specification No 5 should be Dismissed.

Disciplinary Case No 82893/07

The two specifications in this case arise out of conduct related to the first set of criminal charges. It was stipulated by the parties that at his arraignment, an order of protection was issued directing the Respondent to stay away from and to not call or contact [redacted]. Specification No 1 alleges a violation of that order in that it is claimed that the Respondent called her from an OnStar phone located in and usable only from his personal vehicle, a [redacted].

There were two phone calls allegedly made from the OnStar phone, one after 8:00 pm in which the Respondent allegedly spoke to [redacted]. He asked for [redacted], who was not home at the time. There was a second call from the OnStar phone after 9:00 pm that [redacted] recognized from her caller ID as coming from the OnStar phone, which she did not answer.

Specification No 2 charges the Respondent with perjury claiming he gave false testimony under oath at the criminal trial regarding where he went after his arraignment creating, in effect, an alibi for the charge that he called [redacted] from his personal vehicle's

OnStar phone

There is also, as part of the criminal contempt, a claim that the Respondent made another phone call later in the evening, from a number unknown to [REDACTED] [REDACTED] testified that she answered this call and when she heard the Respondent say "hello" she hung up. The problem of proof with this phone call is that [REDACTED] was not certain the caller was the Respondent. As such that call is eliminated from consideration in these charges.<sup>3</sup>

It is undisputed that when the Respondent was arrested on the morning of March 26, 2007 his vehicle was taken to his command, the Queens Warrant Squad, at Creedmoor Hospital in Queens.

The Respondent denies that he made the call or calls to [REDACTED] which could only have been made from the vehicle. The Department contends that he went to Queens, picked up his vehicle and made the telephone calls from that vehicle.

Libranti testified that he reviewed the minutes of the trial and that the Respondent testified that he went uptown by subway after his arraignment, the trial minutes of the Respondent's testimony, which have been received in evidence (Court Exhibit 1) confirm this fact. The materiality of the Respondent's testimony is clear. If he was in Manhattan he could not have made the prohibited phone calls.

There are a number of pieces of evidence on this issue. The Respondent has offered the transcript of the testimony of [REDACTED] and [REDACTED] given at the criminal trial. Both the Department and the Respondent have put in cell phone records regarding calls made from the Respondent's OnStar cell phone. The Department has put in evidence records regarding the Respondent's Metrocard usage. The Department has put in the testimony [REDACTED] from the criminal trial. The

<sup>3</sup> This phone call was discussed earlier on the issue of aggravated harassment.

Respondent's testimony at the criminal trial was received in evidence without objection

Cell Phone Records

As noted above, there are two sets of cell phone records in evidence. The Department has put in evidence records obtained by Loo in July 2007 from Verizon Wireless. The Respondent has put in evidence records obtained by the New York County District Attorney's office from OnStar in April 2008 for the same cellular telephone. According to the cover letter from Verizon, OnStar is a reseller of their service.

While there are discrepancies between the records there is no real question about the authenticity of each set of records. The issue, as will be seen, is completeness of the records.

The OnStar records list eight calls for March 26, 2007 while the Verizon records list 11. All of the numbers called according to the OnStar records appear on the Verizon list. The Verizon records list the time and duration of the call. The OnStar records do not list the time of the calls and the durations are different than those on the Verizon records. For instance a call listed to a particular number on the Verizon records is 346 seconds whereas on the OnStar records it is rounded up to 360 seconds. Additionally the OnStar records do not seem to be in time sequence whereas the Verizon list the time of the call and the calls are in time sequence.

The Verizon records show two phone calls to [REDACTED] home number at 20 21 27 hrs and 20 22 24 hrs, the first lasting 47 seconds and the next 42 seconds. The OnStar records show one call to that number lasting 60 seconds.

The Respondent suggested that every morning it was his habit to make a wake up

call to [REDACTED] and that because it is listed first on OnStar records it was in fact the first call of the day. Looking at the two lists it is clear that the Verizon records list the time of the call while time of the call does not seem to be an issue in the OnStar records. The calls appear on the OnStar records in a different sequence. Moreover there are two calls recorded on the Verizon records to [REDACTED] cell phone number. One of these calls was at 7:45 am and the next was at 7:54 am.

Considering both sets of records, this Court is satisfied that a call was made from the Respondent's OnStar system to [REDACTED]'s home telephone at about 8:20 pm. Whether this call was one uninterrupted call or one that was somehow briefly interrupted and then promptly reconnected is immaterial, both sets of records indicate that the call was made

#### Respondent's Metrocard

Records regarding the use of the Respondent's Department-issued unlimited Metrocard were entered into evidence (DX 6). The records for March 26, 2007 indicate that the card was used two times at the Chambers Street station. The first time at 18:12:042 hours and the second time 18:12:043 hours. Murphy testified that the Chambers Street station entrance used led to the J, M, Z and 4, 5, 6 lines. An hour later, at 19:12 hours, the pass was used again to enter the subway system at Sutphin Boulevard. Murphy testified that this was on the F line. At 19:24 hours the card was used again to board the Q-1 bus line. There was testimony that this line goes near the Creedmoor facility where the Respondent's vehicle had been parked after his arrest.

Murphy testified that someone boarding the F line at Sutphin Boulevard would travel east to the 169<sup>th</sup> Street station to change for the Q-1 bus. Murphy surmised that

whoever used the Respondent's Metrocard took the J train from Chambers Street to the Sutphin Boulevard station on that line. The person then walked to the Sutphin Boulevard station on the F line, entering the system there. The person would then have gotten on the F train and gone to 169<sup>th</sup> Street where that person transferred to the Q-1 bus.

During questioning, he agreed that a person leaving the Chambers Street station on the 6 line could transfer to the F line without swiping the Metrocard and then to Sutphin Boulevard. If that route was used, the person would have left the system, for whatever reason, and returned at Sutphin Boulevard to continue the journey to the Q-1.

This Court finds it immaterial what route was used. It is very clear that someone used the Respondent's Metrocard to go to Queens and take a bus that went near the Creedmoor facility where the Respondent's vehicle was located.

#### The Respondent's Version of Events

The Respondent's version of events for the evening of March 26, 2007 is set forth in the testimony of [REDACTED] and [REDACTED] at the criminal trial along with the Respondent's own testimony.

[REDACTED] testified that the Respondent came to her home at 9:30 pm and asked if he could stay the night, which he did. The calls the Department alleged the Respondent made to [REDACTED] home were at 8:21 pm and 8:22 pm. [REDACTED]' testimony is irrelevant to the issue of whether the Respondent went to Queens. If he did so he would have had ample time to get back to Manhattan by 9:30 pm.

The [REDACTED] testimony is relevant, primarily because of its confusion and conflict with the Respondent's testimony.

[REDACTED] testified about his close relationship with the Respondent, [REDACTED]  
He also testified that he knew the Respondent's wife [REDACTED]. On March 26, 2007, after learning of the Respondent's arrest he went with the Respondent's wife [REDACTED] to arrange for bail so he could be released. He said they posted the bail at about 7:00 pm.<sup>4</sup>

[REDACTED] testified that the Respondent was released from the criminal court building and that they drove back to [REDACTED]'s apartment [REDACTED].

[REDACTED] He testified that the vehicle he used was the Respondent's [REDACTED]. He also testified that he stayed at [REDACTED]'s apartment for about four hours and that the Respondent left at about 9:30 pm.

[REDACTED] testified that he used [REDACTED]'s cell phone to call [REDACTED].<sup>5</sup> He testified that he made two 20-second phone calls at about 10:00 pm.

The Respondent testified at this proceeding that [REDACTED] posted bail and he was released at about 6:00 pm. [REDACTED] and [REDACTED] were present when he was released. He testified that he got on the subway and went to his [REDACTED].

[REDACTED] He "believed" that he was accompanied by [REDACTED] and [REDACTED]. The Respondent had no explanation for the use of his official Department Metrocard although he later surmised that his wife, [REDACTED], gave the card to [REDACTED] so he could retrieve the car from Creedmoor.

The problem here is that there is no way to make these stories match. [REDACTED] testified that they all drove in the [REDACTED] from the court after the arraignment. The Respondent said they all took the subway. Later in his testimony at this proceeding the

<sup>4</sup> The Respondent testified that he was released at about 6:00 pm, which is probably more accurate given the time they entered the subway system, which was 6:12pm.

<sup>5</sup> The Respondent later clarified that this was his son's cell phone registered in Jeanette's name.

Respondent remembered that [REDACTED] may have gone to pick up the car but [REDACTED] testified that he stayed four hours at [REDACTED]'s house [REDACTED]

Even taking into account the frailty of human memory, there is something seriously wrong with these stories. The only conclusion that can be drawn is that one or more persons were lying.

#### The Department's version of events

The Department's version of the events of March 26, 2007 is certainly more coherent than the Respondent's. According to the Metrocard records, the Respondent, who is the only person authorized to use the Department issued card, entered the subway system at a station near the courthouse at 6:12 pm. He travelled out to Queens on the subway, exiting the system and then re-entering at Sutphin Boulevard on the F line at 7:12 pm. He then boarded the Q-1 bus to Creedmoor at 7:24 pm.

Once in his vehicle he called [REDACTED] at her home telephone number. He made a call or calls at about 8:20 pm from his vehicle. [REDACTED] answered that call, in which the Respondent asked to speak to [REDACTED] who was out. At about 9:00 pm, after [REDACTED] returned home, another call was made from the vehicle but was not answered.

#### The testimony of [REDACTED] and [REDACTED]

As has been noted, [REDACTED] testified at the criminal trial of the Respondent. Her [REDACTED] testified at the trial as well. [REDACTED] testified that at about 8:00 pm on March 26, 2007, she received a telephone call from the Respondent. She could not recall how she knew it was the Respondent, she said it could

have been through caller ID, or because she recognized the voice or because he said his name She said that he asked for [REDACTED] who was not home at the time When [REDACTED] came home she told her about the call

[REDACTED] testified that when she got home, at about 8 30 to 9 00 pm, [REDACTED] told her about the call She said that sometime after 9 00 pm she got a call, which through caller ID she recognized as coming from the Respondent's car phone She did not pick up the telephone She also testified that she got another call from an unknown number She said after saying hello she believed the caller was the Respondent and hung up the telephone

Analysis of testimony regarding March 26, 2007

The evidence to support the Department's case is comprised of the Verizon telephone records, the Metrocard records and the testimony of [REDACTED] As has been discussed, the Metrocard records show that after the Respondent was released from jail someone used the Respondent's Department-issued Metrocard to go from a station near the Manhattan Criminal Court to Queens to a bus that took that person to Creedmoor, where the Respondent's car was The Department claims the person who did this was the Respondent

[REDACTED]'s testimony dovetails with the Verizon records in that she claims to have received a call at about the same time as those records indicate from the Respondent This testimony also dovetails with the Metrocard records as the Respondent would have gotten to Creedmoor and been in the vehicle by 8 20 pm when the call was made

The limitation in her testimony, which is credible, is that she could not recall how

she identified the caller as the Respondent. If the manner in which she made that conclusion was the Respondent's voice that would certainly be direct evidence that he made the call. If the manner of determining that the caller was the Respondent was only the caller ID then all her testimony can establish is that someone in the Respondent's vehicle made the call. Because [REDACTED] was not certain, the Court must assume it is the latter.

The deciding factor here is the case the Respondent put forward. Clearly the testimony from [REDACTED] that they drove to upper Manhattan was false. The Court finds this could not have been a mistake not just because he should have remembered the subway ride, but because he would have had to remember how he got the [REDACTED] and what he did with it while he awaited the arraignment.

[REDACTED] testimony that he remained at [REDACTED]'s house is in conflict with the Respondent's surmise in his testimony at this proceeding that [REDACTED] went to pick up the vehicle and also in conflict with the Respondent's testimony that they all went to his [REDACTED] house. Moreover, the Respondent would have been suborning perjury if he put [REDACTED] forward as a witness to say they all went to northern Manhattan if [REDACTED] fact went to Queens to get the car.

Matters get even more convoluted when one considers the Respondent's testimony at his criminal trial. At that trial the Respondent (then-Defendant) testified, without qualification, that after his arrest the next time he saw his [REDACTED] was the next day, on March 27, 2007 in the parking lot of the Queens Warrant Squad. At this proceeding, the Respondent testified that he believed that [REDACTED] picked up the [REDACTED] and that he got it back from [REDACTED] in the Bronx on March 27, 2007.

There is no testimony that [REDACTED] or any other person went to pick up the car so that would only leave the Respondent as the person who went out to Queens to pick up the car

The conflicts between the Respondent and [REDACTED]' version of events at the criminal trial strongly suggests that it is the result of two people who got together to make up a story and one of them, [REDACTED] forgot the details. The difference between the Respondent's trial testimony and his testimony at this proceeding occurred because in the intervening period the Metrocard records were obtained. The reason both of these things occurred is that the Respondent needed to create an alibi so that he could deny making a call from his car phone to [REDACTED] house at about 8:20 pm and attempting to make another call at 9:00 pm in violation of the court order of protection.

This Court finds the evidence, taken as a whole, sufficient and substantial enough for the Department to meet its burden of proof in establishing that upon his release from custody the Respondent did not go to upper Manhattan but in fact went to Queens to pick up his car.

Specification No 1

This specification alleges that the Respondent violated a valid New York County Criminal Court Order of Protection, which was issued on March 26, 2007, by Judge Robert M. Mandelbaum.

Based on the above analysis the Department has proved by a clear preponderance of the evidence that the Respondent was in his vehicle on the evening of March 26, 2007. There is credible testimony from [REDACTED] that she received a telephone call from the

Respondent using the OnStar phone in the vehicle, in which he sought to speak to her mother

There is also credible testimony from [REDACTED] that she received a phone call from the Respondent, again using the OnStar phone, after 9:00 pm which she did not answer

Since neither of the phone calls resulted in direct communication between the Respondent and [REDACTED], the Respondent's act was not completed. Because he intended to contact [REDACTED] the crime he committed was an attempted criminal contempt. The specification is modified to reflect the attempted crime. The Respondent is found Guilty of Specification No. 1 – as modified to reflect an attempted criminal contempt.

#### Specification No. 2

The Respondent is charged under this specification with perjury in the third degree, in violation of section 210.05 of the Penal Law, a class A misdemeanor. The specification charges that the Respondent gave "false testimony in the Criminal Court of New York, County of New York, to wit said Detective testified that when he was released from custody he took a train from lower Manhattan to upper Manhattan, when in fact he went to Queens."

The transcript of the Respondent's testimony at the criminal trial confirms that he testified under oath. Based on the foregoing analysis the Department has proved by a clear preponderance of the evidence that the Respondent gave false testimony at that trial when he claimed to go to upper Manhattan after his arraignment. Further, the facts of this case establish that he in fact went to Queens. The Respondent is found Guilty of Specification No. 2.

Disciplinary Case No 85140/09

Specification No 1 alleges that the Respondent wrongfully and without just cause utilized one or more Department computer to make inquiries unrelated to the official business of the Department or the City of New York, in that he improperly utilized a Department computer to ascertain information for his personal use

In his testimony before this Court and at his official Department interview, the Respondent admitted to this and consequently he is found Guilty of Specification No 1

Specification No 2 alleges that the Respondent did knowingly associate with individuals reasonably believed to be engaged in, likely to engage in or have engaged in criminal activities The individuals referred to in the specification are [REDACTED] and Williams

The Respondent admitted that he knew [REDACTED], [REDACTED] had been arrested but denied knowing of his convictions [REDACTED] testified about how close he and the Respondent were The Respondent conducted at least eight searches of [REDACTED] record on the BADS system (see DX 3) [REDACTED] It is simply not believable that he did not know about some, if not all, of [REDACTED] convictions This Court finds the Respondent's testimony in this regard not credible

Moreover, at another point in his testimony he admitted he knew about some of [REDACTED]'s early convictions He also knew that [REDACTED] had been arrested a number of times

The Respondent testified that before his criminal trial he knew that [REDACTED] had a criminal history but claimed he did not know the details He denied looking through her criminal records on the BADS system but merely obtained information about the

status of her license

The issue is covered in detail in the Respondent's official Department interview His statements about his relationship with [REDACTED] are so self-contradictory and absurd as to be beyond belief This testimony focused in on his contact with [REDACTED] after his criminal trial, where he clearly learned that [REDACTED] had a felony record

At first he said the most recent contact he had with [REDACTED] was several weeks earlier in which he helped her with a computer problem He said that he does not call her He said the last time he spoke to her was in connection with that computer problem He was then asked for her cell phone number There was then a break and the Respondent returned and said there had been a "couple" of calls between him and [REDACTED] "more currently" These arose he said because of a problem in which a \$210 charge she made was placed on his credit card A few moments later that "couple" of calls turned into "numerous" calls as he tried to get the matter straightened out How a single call involving a computer problem morphed into numerous phone calls about an improper payment on his credit card of \$210, all of which occurred within the last few weeks, can only be explained by the fact that he was less than honest in his answers

When asked about how his credit card information got on [REDACTED]' computer he said that occurred more than two years prior This too appears to be invented to take the association with [REDACTED] to a point before which it can clearly be proven that he knew of [REDACTED] felony record

While it appears that the Respondent was not forthcoming about the nature of his relationship with [REDACTED] it is clear that it was and remained much more significant than the Respondent would have us believe In any event his contact, if nothing else, in

helping her with a computer problems several weeks earlier, well after he knew about her felony convictions and at a time within the purview of this specification, indicates that he did knowingly associate with V [REDACTED] who was a person who he had reason to believe had or was likely to have engaged in criminal activities. The Respondent is found Guilty of Specification No 2

Specification No 3 alleges that the Respondent made "false statements during his Official Department interview, to wit said Detective did state that he was not aware of the criminal background of [REDACTED], when in fact said Detective had run Ms [REDACTED]' name through Department databases "

The first problem with this specification is that it misstates the question put to the Respondent in his official Department interview. He was not asked about her criminal history generally but about her "felony arrest and conviction." This is significant because [REDACTED] has a felony and a misdemeanor conviction

The second problem is that it assumes that the Respondent knew about this history from his search of the BADS system

With respect to the BADS system, there is only one inquiry for V [REDACTED]. The Respondent denied that he got specific information about her criminal history when he made that inquiry. He testified instead that he made an inquiry on the status of her license. There was no rebuttal testimony to refute that claim.

In considering this specification the Court notes that it misstates what was asked at the official Department interview and assumes a fact (that the Respondent learned of that felony conviction from the BADS system) that has not been established.

The Respondent is found Not Guilty of Specification No 3

Specification No 4 alleges that the Respondent made "false statements during his official Department interview, to wit said Detective did state that he was not aware of the extent of the criminal background of [REDACTED], [REDACTED] until said Detective's criminal trial, when in fact said Detective had run Mr [REDACTED]' name through Department databases "

There is no doubt that the Respondent knew or should have known about the fact that [REDACTED] was a person who he should reasonably have believed to be engaged in, likely to engage in or have engaged in criminal activities and that was addressed in Specification No 2 This specification requires that he had to have known of the "extent" of [REDACTED] record and that when he denied knowing about it, the statements were false

During his official Department interview, the Respondent was questioned about and made statements about computer inquiries Both the questions and answers implied that at least some of the searches involved license information or his merely obtaining the date of an arrest There was no indication during the official Department interview or during this trial that the Respondent's searches revealed the "extent" of [REDACTED] criminal background The Respondent, in his testimony, claimed that the searches did not reveal the full "extent" of [REDACTED] record and the Department offered no testimony to rebut that assertion

The Respondent is found Not Guilty of Specification No 4

Specification No 5 alleges that the Respondent "did wrongfully and without just cause prevent or interfere with an official Department investigation in that said Detective did provide misleading and vague responses to questions asked of him during his Official Department interview "

As has been noted in this decision, there are certainly problems with the manner in which the Respondent answered some of the questions at his Department interview. However, the term "vague" better applies to this specification than to the Respondent's testimony at his official Department interview. Not a single question or subject area is identified in this specification.

During the Department's opening statement the Court asked the Advocate to explain what this specification was about. The Advocate asserted that it was about the fact that the Respondent claimed not to have picked up his car until the next day. That false testimony she asserted caused the investigators to have to conduct further investigation such as sending for the Metrocard records.

The first problem with this is that the Respondent did not make any statement about picking up the vehicle the next day (March 27, 2007) at his official Department interview. The second problem is that, in his testimony in this proceeding, Libranti stated that the reason he sent for the Metrocard records is that he noticed a discrepancy between the Respondent's testimony and [REDACTED] testimony during his review of the *criminal trial transcript*.<sup>6</sup> He said he noticed that while [REDACTED] said they drove away from court in the [REDACTED] the Respondent said they took the subway. The representation that the Advocate made is not supported by the evidence. It is recommended that this specification be

<sup>6</sup> The Department Advocate, in her questions, asserted that Libranti learned of the discrepancy from the Patrol Guide interview but the witness himself never said that. In fact, as noted, the issue was not discussed at that official Department interview.

Dismissed.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

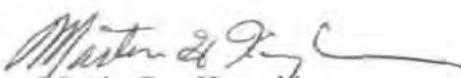
The Respondent was appointed to the Department on January 19, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found guilty of sexual misconduct and criminal contempt, two Class A misdemeanors. He also admitted to misusing Department computers for the purpose of accessing information from Department databases regarding a number of people on a number of occasions. While these are serious charges, they would not justify the dismissal of a 17 ½ year veteran of this Department.

The finding of guilt regarding perjury is another matter. The defense put forward in the criminal trial, as it relates to the issue of the OnStar phone calls, was based on a lie. The Respondent's testimony was part of an effort by this Respondent, and included

[REDACTED] to deceive the jury. Based on this and the other misconduct, noted above, committed by this Respondent, the only recommendation this Court can make is that the Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

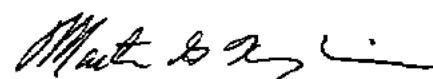
From      Deputy Commissioner - Trials  
  
To        Police Commissioner  
  
Subject    CONFIDENTIAL MEMORANDUM  
              DETECTIVE MICHAEL STEWARD  
              TAX REGISTRY NO 914270  
              DISCIPLINARY CASE NOS 82892/07, 82893/07 & 85140/09

The Respondent received an overall rating of 3 5 on his 2009 performance evaluation, 4 0 on his 2008 evaluation, and 3 5 on his 2007 evaluation. He has received two Excellent Police Duty medals and one Meritorious Police Duty medal



The Respondent has two prior disciplinary adjudications. In 2002, he forfeited 23 days served on suspension for failure to comply with a lawful order. In 2006, he forfeited 30 vacation days for failing to request the patrol supervisor after being involved in an off-duty police incident. The Respondent is presently on Level 2 Disciplinary Monitoring for serious misconduct.

For your consideration



Martin G. Karopkin  
Deputy Commissioner - Trials